

**As Introduced**

**132nd General Assembly**

**Regular Session**

**2017-2018**

**H. B. No. 425**

**Representatives Antani, Craig**

**Cosponsors: Representatives Becker, Seitz, Sheehy, Lang**

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**A BILL**

To amend sections 149.43 and 149.433 of the Revised Code to provide that specified portions of peace officers' body-worn camera recordings and the infrastructure record of a public school are not public records for purposes of the Public Records Law. 1  
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**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That sections 149.43 and 149.433 of the Revised Code be amended to read as follows: 7  
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**Sec. 149.43.** (A) As used in this section: 9

(1) "Public record" means records kept by any public office, including, but not limited to, state, county, city, village, township, and school district units, and records pertaining to the delivery of educational services by an alternative school in this state kept by the nonprofit or for-profit entity operating the alternative school pursuant to section 3313.533 of the Revised Code. "Public record" does not mean any of the following: 10  
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(a) Medical records; 18

(b) Records pertaining to probation and parole proceedings	19
or to proceedings related to the imposition of community control	20
sanctions and post-release control sanctions;	21
(c) Records pertaining to actions under section 2151.85	22
and division (C) of section 2919.121 of the Revised Code and to	23
appeals of actions arising under those sections;	24
(d) Records pertaining to adoption proceedings, including	25
the contents of an adoption file maintained by the department of	26
health under sections 3705.12 to 3705.124 of the Revised Code;	27
(e) Information in a record contained in the putative	28
father registry established by section 3107.062 of the Revised	29
Code, regardless of whether the information is held by the	30
department of job and family services or, pursuant to section	31
3111.69 of the Revised Code, the office of child support in the	32
department or a child support enforcement agency;	33
(f) Records specified in division (A) of section 3107.52	34
of the Revised Code;	35
(g) Trial preparation records;	36
(h) Confidential law enforcement investigatory records;	37
(i) Records containing information that is confidential	38
under section 2710.03 or 4112.05 of the Revised Code;	39
(j) DNA records stored in the DNA database pursuant to	40
section 109.573 of the Revised Code;	41
(k) Inmate records released by the department of	42
rehabilitation and correction to the department of youth	43
services or a court of record pursuant to division (E) of	44
section 5120.21 of the Revised Code;	45

(l) Records maintained by the department of youth services pertaining to children in its custody released by the department of youth services to the department of rehabilitation and correction pursuant to section 5139.05 of the Revised Code;	46 47 48 49
(m) Intellectual property records;	50
(n) Donor profile records;	51
(o) Records maintained by the department of job and family services pursuant to section 3121.894 of the Revised Code;	52 53
(p) Peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, community-based correctional facility employee, youth services employee, firefighter, EMT, investigator of the bureau of criminal identification and investigation, or federal law enforcement officer residential and familial information;	54 55 56 57 58 59 60
(q) In the case of a county hospital operated pursuant to Chapter 339. of the Revised Code or a municipal hospital operated pursuant to Chapter 749. of the Revised Code, information that constitutes a trade secret, as defined in section 1333.61 of the Revised Code;	61 62 63 64 65
(r) Information pertaining to the recreational activities of a person under the age of eighteen;	66 67
(s) In the case of a child fatality review board acting under sections 307.621 to 307.629 of the Revised Code or a review conducted pursuant to guidelines established by the director of health under section 3701.70 of the Revised Code, records provided to the board or director, statements made by board members during meetings of the board or by persons participating in the director's review, and all work products of	68 69 70 71 72 73 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	103

section 317.24 of the Revised Code, as specified in division (B)	104
(2) of that section;	105
(aa) Usage information including names and addresses of	106
specific residential and commercial customers of a municipally	107
owned or operated public utility;	108
(bb) Records described in division (C) of section 187.04	109
of the Revised Code that are not designated to be made available	110
to the public as provided in that division;	111
(cc) Information and records that are made confidential,	112
privileged, and not subject to disclosure under divisions (B)	113
and (C) of section 2949.221 of the Revised Code;	114
(dd) Personal information, as defined in section 149.45 of	115
the Revised Code;	116
(ee) The confidential name, address, and other personally	117
identifiable information of a program participant in the address	118
confidentiality program established under sections 111.41 to	119
111.47 of the Revised Code, including the contents of any	120
application for absent voter's ballots, absent voter's ballot	121
identification envelope statement of voter, or provisional	122
ballot affirmation completed by a program participant who has a	123
confidential voter registration record, and records or portions	124
of records pertaining to that program that identify the number	125
of program participants that reside within a precinct, ward,	126
township, municipal corporation, county, or any other geographic	127
area smaller than the state. As used in this division,	128
"confidential address" and "program participant" have the	129
meaning defined in section 111.41 of the Revised Code.	130
(ff) Orders for active military service of an individual	131
serving or with previous service in the armed forces of the	132

United States, including a reserve component, or the Ohio 133  
organized militia, except that, such order becomes a public 134  
record on the day that is fifteen years after the published date 135  
or effective date of the call to order. 136

(gg) Restricted portions of a body-worn camera recording. 137

(2) "Confidential law enforcement investigatory record" 138  
means any record that pertains to a law enforcement matter of a 139  
criminal, quasi-criminal, civil, or administrative nature, but 140  
only to the extent that the release of the record would create a 141  
high probability of disclosure of any of the following: 142

(a) The identity of a suspect who has not been charged 143  
with the offense to which the record pertains, or of an 144  
information source or witness to whom confidentiality has been 145  
reasonably promised; 146

(b) Information provided by an information source or 147  
witness to whom confidentiality has been reasonably promised, 148  
which information would reasonably tend to disclose the source's 149  
or witness's identity; 150

(c) Specific confidential investigatory techniques or 151  
procedures or specific investigatory work product; 152

(d) Information that would endanger the life or physical 153  
safety of law enforcement personnel, a crime victim, a witness, 154  
or a confidential information source. 155

(3) "Medical record" means any document or combination of 156  
documents, except births, deaths, and the fact of admission to 157  
or discharge from a hospital, that pertains to the medical 158  
history, diagnosis, prognosis, or medical condition of a patient 159  
and that is generated and maintained in the process of medical 160  
treatment. 161

(4) "Trial preparation record" means any record that 162  
contains information that is specifically compiled in reasonable 163  
anticipation of, or in defense of, a civil or criminal action or 164  
proceeding, including the independent thought processes and 165  
personal trial preparation of an attorney. 166

(5) "Intellectual property record" means a record, other 167  
than a financial or administrative record, that is produced or 168  
collected by or for faculty or staff of a state institution of 169  
higher learning in the conduct of or as a result of study or 170  
research on an educational, commercial, scientific, artistic, 171  
technical, or scholarly issue, regardless of whether the study 172  
or research was sponsored by the institution alone or in 173  
conjunction with a governmental body or private concern, and 174  
that has not been publicly released, published, or patented. 175

(6) "Donor profile record" means all records about donors 176  
or potential donors to a public institution of higher education 177  
except the names and reported addresses of the actual donors and 178  
the date, amount, and conditions of the actual donation. 179

(7) "Peace officer, parole officer, probation officer, 180  
bailiff, prosecuting attorney, assistant prosecuting attorney, 181  
correctional employee, community-based correctional facility 182  
employee, youth services employee, firefighter, EMT, 183  
investigator of the bureau of criminal identification and 184  
investigation, or federal law enforcement officer residential 185  
and familial information" means any information that discloses 186  
any of the following about a peace officer, parole officer, 187  
probation officer, bailiff, prosecuting attorney, assistant 188  
prosecuting attorney, correctional employee, community-based 189  
correctional facility employee, youth services employee, 190  
firefighter, EMT, investigator of the bureau of criminal 191

identification and investigation, or federal law enforcement officer:	192
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(a) The address of the actual personal residence of a peace officer, parole officer, probation officer, bailiff, assistant prosecuting attorney, correctional employee, community-based correctional facility employee, youth services employee, firefighter, EMT, an investigator of the bureau of criminal identification and investigation, or federal law enforcement officer, except for the state or political subdivision in which the peace officer, parole officer, probation officer, bailiff, assistant prosecuting attorney, correctional employee, community-based correctional facility employee, youth services employee, firefighter, EMT, investigator of the bureau of criminal identification and investigation, or federal law enforcement officer resides;	194
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(b) Information compiled from referral to or participation in an employee assistance program;	207
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(c) 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, or any medical information pertaining to, 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, investigator of the bureau of criminal identification and investigation, or federal law enforcement officer;	209
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(d) The name of any beneficiary of employment benefits, including, but not limited to, life insurance benefits, provided to a peace officer, parole officer, probation officer, bailiff,	219
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prosecuting attorney, assistant prosecuting attorney, 222  
correctional employee, community-based correctional facility 223  
employee, youth services employee, firefighter, EMT, 224  
investigator of the bureau of criminal identification and 225  
investigation, or federal law enforcement officer by the peace 226  
officer's, parole officer's, probation officer's, bailiff's, 227  
prosecuting attorney's, assistant prosecuting attorney's, 228  
correctional employee's, community-based correctional facility 229  
employee's, youth services employee's, firefighter's, EMT's, 230  
investigator of the bureau of criminal identification and 231  
investigation's, or federal law enforcement officer's employer; 232

(e) The identity and amount of any charitable or 233  
employment benefit deduction made by the peace officer's, parole 234  
officer's, probation officer's, bailiff's, prosecuting 235  
attorney's, assistant prosecuting attorney's, correctional 236  
employee's, community-based correctional facility employee's, 237  
youth services employee's, firefighter's, EMT's, investigator of 238  
the bureau of criminal identification and investigation's, or 239  
federal law enforcement officer's employer from the peace 240  
officer's, parole officer's, probation officer's, bailiff's, 241  
prosecuting attorney's, assistant prosecuting attorney's, 242  
correctional employee's, community-based correctional facility 243  
employee's, youth services employee's, firefighter's, EMT's, 244  
investigator of the bureau of criminal identification and 245  
investigation's, or federal law enforcement officer's 246  
compensation unless the amount of the deduction is required by 247  
state or federal law; 248

(f) The name, the residential address, the name of the 249  
employer, the address of the employer, the social security 250  
number, the residential telephone number, any bank account, 251  
debit card, charge card, or credit card number, or the emergency 252

telephone number of the spouse, a former spouse, or any child of 253  
a peace officer, parole officer, probation officer, bailiff, 254  
prosecuting attorney, assistant prosecuting attorney, 255  
correctional employee, community-based correctional facility 256  
employee, youth services employee, firefighter, EMT, 257  
investigator of the bureau of criminal identification and 258  
investigation, or federal law enforcement officer; 259

(g) A photograph of a peace officer who holds a position 260  
or has an assignment that may include undercover or plain 261  
clothes positions or assignments as determined by the peace 262  
officer's appointing authority. 263

As used in divisions (A) (7) and (B) (9) of this section, 264  
"peace officer" has the same meaning as in section 109.71 of the 265  
Revised Code and also includes the superintendent and troopers 266  
of the state highway patrol; it does not include the sheriff of 267  
a county or a supervisory employee who, in the absence of the 268  
sheriff, is authorized to stand in for, exercise the authority 269  
of, and perform the duties of the sheriff. 270

As used in divisions (A) (7) and (B) (9) of this section, 271  
"correctional employee" means any employee of the department of 272  
rehabilitation and correction who in the course of performing 273  
the employee's job duties has or has had contact with inmates 274  
and persons under supervision. 275

As used in divisions (A) (7) and (B) (9) of this section, 276  
"youth services employee" means any employee of the department 277  
of youth services who in the course of performing the employee's 278  
job duties has or has had contact with children committed to the 279  
custody of the department of youth services. 280

As used in divisions (A) (7) and (B) (9) of this section, 281

"firefighter" means any regular, paid or volunteer, member of a 282  
lawfully constituted fire department of a municipal corporation, 283  
township, fire district, or village. 284

As used in divisions (A) (7) and (B) (9) of this section, 285  
"EMT" means EMTs-basic, EMTs-I, and paramedics that provide 286  
emergency medical services for a public emergency medical 287  
service organization. "Emergency medical service organization," 288  
"EMT-basic," "EMT-I," and "paramedic" have the same meanings as 289  
in section 4765.01 of the Revised Code. 290

As used in divisions (A) (7) and (B) (9) of this section, 291  
"investigator of the bureau of criminal identification and 292  
investigation" has the meaning defined in section 2903.11 of the 293  
Revised Code. 294

As used in divisions (A) (7) and (B) (9) of this section, 295  
"federal law enforcement officer" has the meaning defined in 296  
section 9.88 of the Revised Code. 297

(8) "Information pertaining to the recreational activities 298  
of a person under the age of eighteen" means information that is 299  
kept in the ordinary course of business by a public office, that 300  
pertains to the recreational activities of a person under the 301  
age of eighteen years, and that discloses any of the following: 302

(a) The address or telephone number of a person under the 303  
age of eighteen or the address or telephone number of that 304  
person's parent, guardian, custodian, or emergency contact 305  
person; 306

(b) The social security number, birth date, or 307  
photographic image of a person under the age of eighteen; 308

(c) Any medical record, history, or information pertaining 309  
to a person under the age of eighteen; 310

(d) Any additional information sought or required about a 311  
person under the age of eighteen for the purpose of allowing 312  
that person to participate in any recreational activity 313  
conducted or sponsored by a public office or to use or obtain 314  
admission privileges to any recreational facility owned or 315  
operated by a public office. 316

(9) "Community control sanction" has the same meaning as 317  
in section 2929.01 of the Revised Code. 318

(10) "Post-release control sanction" has the same meaning 319  
as in section 2967.01 of the Revised Code. 320

(11) "Redaction" means obscuring or deleting any 321  
information that is exempt from the duty to permit public 322  
inspection or copying from an item that otherwise meets the 323  
definition of a "record" in section 149.011 of the Revised Code. 324

(12) "Designee" and "elected official" have the same 325  
meanings as in section 109.43 of the Revised Code. 326

(13) "Body-worn camera" means a visual and audio recording 327  
device worn on the person of a peace officer while the peace 328  
officer is engaged in the performance of the peace officer's 329  
duties. 330

(14) "Restricted portions of a body-worn camera recording" 331  
means any visual or audio portion of a body-worn camera 332  
recording that shows, communicates, or discloses any of the 333  
following: 334

(a) The death of a person or a deceased person's body, 335  
unless the death was caused by a peace officer or the consent of 336  
the decedent's executor or administrator has been obtained; 337

(b) The death of a peace officer, firefighter, paramedic, 338

or other first responder, occurring while the decedent was 339  
engaged in the performance of official duties, unless the 340  
consent of the decedent's executor or administrator has been 341  
obtained; 342

(c) Grievous bodily harm, unless the injury was effected 343  
by a peace officer or the consent of the injured person or the 344  
injured person's guardian has been obtained; 345

(d) An act of severe violence against a person that 346  
results in serious physical harm to the person, unless the act 347  
and injury was effected by a peace officer or the consent of the 348  
injured person or the injured person's guardian has been 349  
obtained; 350

(e) Grievous bodily harm to a peace officer, firefighter, 351  
paramedic, or other first responder, occurring while the injured 352  
person was engaged in the performance of official duties, unless 353  
the consent of the injured person or the injured person's 354  
guardian has been obtained; 355

(f) An act of severe violence resulting in serious 356  
physical harm against a peace officer, firefighter, paramedic, 357  
or other first responder, occurring while the injured person was 358  
engaged in the performance of official duties, unless the 359  
consent of the injured person or the injured person's guardian 360  
has been obtained; 361

(g) A person's nude body, unless the person's consent has 362  
been obtained; 363

(h) Protected health information, the identity of a person 364  
in a health care facility who is not the subject of a law 365  
enforcement encounter, or any other information in a health care 366  
facility that could identify a person who is not the subject of 367

<u>a law enforcement encounter;</u>	368
<u>(i) Information that could identify the alleged victim of a sex offense, menacing by stalking, or domestic violence;</u>	369
<u>(j) Information, that does not constitute a confidential law enforcement investigatory record, that could identify a person who provides sensitive or confidential information to a law enforcement agency when the disclosure of the person's identity or the information provided could reasonably be expected to threaten or endanger the safety or property of the person or another person;</u>	371
<u>(k) Personal information of a person who is not arrested, cited, charged, or issued a written warning by a peace officer;</u>	378
<u>(l) Proprietary police contingency plans or tactics that are intended to prevent crime and maintain public order and safety;</u>	380
<u>(m) A personal conversation unrelated to work between peace officers or between a peace officer and an employee of a law enforcement agency;</u>	383
<u>(n) A conversation between a peace officer and a member of the public that does not concern law enforcement activities;</u>	386
<u>(o) The interior of a residence, unless the interior of a residence is the location of an adversarial encounter with, or a use of force by, a peace officer;</u>	388
<u>(p) Obscene material.</u>	391
<u>As used in divisions (A) (13) and (14) of this section, "peace officer" has the same meaning as in section 109.71 of the Revised Code.</u>	392
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<u>As used in division (A) (14) of this section:</u>	395
<u>"Grievous bodily harm" has the same meaning as in section 5924.120 of the Revised Code.</u>	396 397
<u>"Health care" has the same meaning as in section 1337.11 of the Revised Code.</u>	398 399
<u>"Protected health information" has the same meaning as in 45 C.F.R. 160.103.</u>	400 401
<u>"Law enforcement agency" has the same meaning as in section 2925.61 of the Revised Code.</u>	402 403
<u>"Personal information" means any government-issued identification number, date of birth, address, financial information, or criminal justice information from the law enforcement automated data system or similar databases.</u>	404 405 406 407
<u>"Sex offense" has the same meaning as in section 2907.10 of the Revised Code.</u>	408 409
<u>"Firefighter," "paramedic," and "first responder" have the same meanings as in section 4765.01 of the Revised Code.</u>	410 411
<u>"Obscene" has the same meaning as in section 2907.01 of the Revised Code.</u>	412 413
(B) (1) Upon request and subject to division (B) (8) of this section, all public records responsive to the request shall be promptly prepared and made available for inspection to any person at all reasonable times during regular business hours. Subject to division (B) (8) of this section, upon request, a public office or person responsible for public records shall make copies of the requested public record available at cost and within a reasonable period of time. If a public record contains information that is exempt from the duty to permit public	414 415 416 417 418 419 420 421 422

inspection or to copy the public record, the public office or 423  
the person responsible for the public record shall make 424  
available all of the information within the public record that 425  
is not exempt. When making that public record available for 426  
public inspection or copying that public record, the public 427  
office or the person responsible for the public record shall 428  
notify the requester of any redaction or make the redaction 429  
plainly visible. A redaction shall be deemed a denial of a 430  
request to inspect or copy the redacted information, except if 431  
federal or state law authorizes or requires a public office to 432  
make the redaction. 433

(2) To facilitate broader access to public records, a 434  
public office or the person responsible for public records shall 435  
organize and maintain public records in a manner that they can 436  
be made available for inspection or copying in accordance with 437  
division (B) of this section. A public office also shall have 438  
available a copy of its current records retention schedule at a 439  
location readily available to the public. If a requester makes 440  
an ambiguous or overly broad request or has difficulty in making 441  
a request for copies or inspection of public records under this 442  
section such that the public office or the person responsible 443  
for the requested public record cannot reasonably identify what 444  
public records are being requested, the public office or the 445  
person responsible for the requested public record may deny the 446  
request but shall provide the requester with an opportunity to 447  
revise the request by informing the requester of the manner in 448  
which records are maintained by the public office and accessed 449  
in the ordinary course of the public office's or person's 450  
duties. 451

(3) If a request is ultimately denied, in part or in 452  
whole, the public office or the person responsible for the 453

requested public record shall provide the requester with an 454  
explanation, including legal authority, setting forth why the 455  
request was denied. If the initial request was provided in 456  
writing, the explanation also shall be provided to the requester 457  
in writing. The explanation shall not preclude the public office 458  
or the person responsible for the requested public record from 459  
relying upon additional reasons or legal authority in defending 460  
an action commenced under division (C) of this section. 461

(4) Unless specifically required or authorized by state or 462  
federal law or in accordance with division (B) of this section, 463  
no public office or person responsible for public records may 464  
limit or condition the availability of public records by 465  
requiring disclosure of the requester's identity or the intended 466  
use of the requested public record. Any requirement that the 467  
requester disclose the requester's identity or the intended use 468  
of the requested public record constitutes a denial of the 469  
request. 470

(5) A public office or person responsible for public 471  
records may ask a requester to make the request in writing, may 472  
ask for the requester's identity, and may inquire about the 473  
intended use of the information requested, but may do so only 474  
after disclosing to the requester that a written request is not 475  
mandatory and that the requester may decline to reveal the 476  
requester's identity or the intended use and when a written 477  
request or disclosure of the identity or intended use would 478  
benefit the requester by enhancing the ability of the public 479  
office or person responsible for public records to identify, 480  
locate, or deliver the public records sought by the requester. 481

(6) If any person chooses to obtain a copy of a public 482  
record in accordance with division (B) of this section, the 483

public office or person responsible for the public record may 484  
require that person to pay in advance the cost involved in 485  
providing the copy of the public record in accordance with the 486  
choice made by the person seeking the copy under this division. 487  
The public office or the person responsible for the public 488  
record shall permit that person to choose to have the public 489  
record duplicated upon paper, upon the same medium upon which 490  
the public office or person responsible for the public record 491  
keeps it, or upon any other medium upon which the public office 492  
or person responsible for the public record determines that it 493  
reasonably can be duplicated as an integral part of the normal 494  
operations of the public office or person responsible for the 495  
public record. When the person seeking the copy makes a choice 496  
under this division, the public office or person responsible for 497  
the public record shall provide a copy of it in accordance with 498  
the choice made by the person seeking the copy. Nothing in this 499  
section requires a public office or person responsible for the 500  
public record to allow the person seeking a copy of the public 501  
record to make the copies of the public record. 502

(7) (a) Upon a request made in accordance with division (B) 503  
of this section and subject to division (B) (6) of this section, 504  
a public office or person responsible for public records shall 505  
transmit a copy of a public record to any person by United 506  
States mail or by any other means of delivery or transmission 507  
within a reasonable period of time after receiving the request 508  
for the copy. The public office or person responsible for the 509  
public record may require the person making the request to pay 510  
in advance the cost of postage if the copy is transmitted by 511  
United States mail or the cost of delivery if the copy is 512  
transmitted other than by United States mail, and to pay in 513  
advance the costs incurred for other supplies used in the 514

mailing, delivery, or transmission. 515

(b) Any public office may adopt a policy and procedures 516  
that it will follow in transmitting, within a reasonable period 517  
of time after receiving a request, copies of public records by 518  
United States mail or by any other means of delivery or 519  
transmission pursuant to division (B)(7) of this section. A 520  
public office that adopts a policy and procedures under division 521  
(B)(7) of this section shall comply with them in performing its 522  
duties under that division. 523

(c) In any policy and procedures adopted under division 524  
(B)(7) of this section: 525

(i) A public office may limit the number of records 526  
requested by a person that the office will physically deliver by 527  
United States mail or by another delivery service to ten per 528  
month, unless the person certifies to the office in writing that 529  
the person does not intend to use or forward the requested 530  
records, or the information contained in them, for commercial 531  
purposes; 532

(ii) A public office that chooses to provide some or all 533  
of its public records on a web site that is fully accessible to 534  
and searchable by members of the public at all times, other than 535  
during acts of God outside the public office's control or 536  
maintenance, and that charges no fee to search, access, 537  
download, or otherwise receive records provided on the web site, 538  
may limit to ten per month the number of records requested by a 539  
person that the office will deliver in a digital format, unless 540  
the requested records are not provided on the web site and 541  
unless the person certifies to the office in writing that the 542  
person does not intend to use or forward the requested records, 543  
or the information contained in them, for commercial purposes. 544

(iii) For purposes of division (B) (7) of this section, 545  
"commercial" shall be narrowly construed and does not include 546  
reporting or gathering news, reporting or gathering information 547  
to assist citizen oversight or understanding of the operation or 548  
activities of government, or nonprofit educational research. 549

(8) A public office or person responsible for public 550  
records is not required to permit a person who is incarcerated 551  
pursuant to a criminal conviction or a juvenile adjudication to 552  
inspect or to obtain a copy of any public record concerning a 553  
criminal investigation or prosecution or concerning what would 554  
be a criminal investigation or prosecution if the subject of the 555  
investigation or prosecution were an adult, unless the request 556  
to inspect or to obtain a copy of the record is for the purpose 557  
of acquiring information that is subject to release as a public 558  
record under this section and the judge who imposed the sentence 559  
or made the adjudication with respect to the person, or the 560  
judge's successor in office, finds that the information sought 561  
in the public record is necessary to support what appears to be 562  
a justiciable claim of the person. 563

(9) (a) Upon written request made and signed by a 564  
journalist on or after December 16, 1999, a public office, or 565  
person responsible for public records, having custody of the 566  
records of the agency employing a specified peace officer, 567  
parole officer, probation officer, bailiff, prosecuting 568  
attorney, assistant prosecuting attorney, correctional employee, 569  
community-based correctional facility employee, youth services 570  
employee, firefighter, EMT, investigator of the bureau of 571  
criminal identification and investigation, or federal law 572  
enforcement officer shall disclose to the journalist the address 573  
of the actual personal residence of the peace officer, parole 574  
officer, probation officer, bailiff, prosecuting attorney, 575

assistant prosecuting attorney, correctional employee, 576  
community-based correctional facility employee, youth services 577  
employee, firefighter, EMT, investigator of the bureau of 578  
criminal identification and investigation, or federal law 579  
enforcement officer and, if the peace officer's, parole 580  
officer's, probation officer's, bailiff's, prosecuting 581  
attorney's, assistant prosecuting attorney's, correctional 582  
employee's, community-based correctional facility employee's, 583  
youth services employee's, firefighter's, EMT's, investigator of 584  
the bureau of criminal identification and investigation's, or 585  
federal law enforcement officer's spouse, former spouse, or 586  
child is employed by a public office, the name and address of 587  
the employer of the peace officer's, parole officer's, probation 588  
officer's, bailiff's, prosecuting attorney's, assistant 589  
prosecuting attorney's, correctional employee's, community-based 590  
correctional facility employee's, youth services employee's, 591  
firefighter's, EMT's, investigator of the bureau of criminal 592  
identification and investigation's, or federal law enforcement 593  
officer's spouse, former spouse, or child. The request shall 594  
include the journalist's name and title and the name and address 595  
of the journalist's employer and shall state that disclosure of 596  
the information sought would be in the public interest. 597

(b) Division (B) (9) (a) of this section also applies to 598  
journalist requests for customer information maintained by a 599  
municipally owned or operated public utility, other than social 600  
security numbers and any private financial information such as 601  
credit reports, payment methods, credit card numbers, and bank 602  
account information. 603

(c) As used in division (B) (9) of this section, 604  
"journalist" means a person engaged in, connected with, or 605  
employed by any news medium, including a newspaper, magazine, 606

press association, news agency, or wire service, a radio or 607  
television station, or a similar medium, for the purpose of 608  
gathering, processing, transmitting, compiling, editing, or 609  
disseminating information for the general public. 610

(C) (1) If a person allegedly is aggrieved by the failure 611  
of a public office or the person responsible for public records 612  
to promptly prepare a public record and to make it available to 613  
the person for inspection in accordance with division (B) of 614  
this section or by any other failure of a public office or the 615  
person responsible for public records to comply with an 616  
obligation in accordance with division (B) of this section, the 617  
person allegedly aggrieved may do only one of the following, and 618  
not both: 619

(a) File a complaint with the clerk of the court of claims 620  
or the clerk of the court of common pleas under section 2743.75 621  
of the Revised Code; 622

(b) Commence a mandamus action to obtain a judgment that 623  
orders the public office or the person responsible for the 624  
public record to comply with division (B) of this section, that 625  
awards court costs and reasonable attorney's fees to the person 626  
that instituted the mandamus action, and, if applicable, that 627  
includes an order fixing statutory damages under division (C) (2) 628  
of this section. The mandamus action may be commenced in the 629  
court of common pleas of the county in which division (B) of 630  
this section allegedly was not complied with, in the supreme 631  
court pursuant to its original jurisdiction under Section 2 of 632  
Article IV, Ohio Constitution, or in the court of appeals for 633  
the appellate district in which division (B) of this section 634  
allegedly was not complied with pursuant to its original 635  
jurisdiction under Section 3 of Article IV, Ohio Constitution. 636

(2) If a requester transmits a written request by hand 637  
delivery or certified mail to inspect or receive copies of any 638  
public record in a manner that fairly describes the public 639  
record or class of public records to the public office or person 640  
responsible for the requested public records, except as 641  
otherwise provided in this section, the requester shall be 642  
entitled to recover the amount of statutory damages set forth in 643  
this division if a court determines that the public office or 644  
the person responsible for public records failed to comply with 645  
an obligation in accordance with division (B) of this section. 646

The amount of statutory damages shall be fixed at one 647  
hundred dollars for each business day during which the public 648  
office or person responsible for the requested public records 649  
failed to comply with an obligation in accordance with division 650  
(B) of this section, beginning with the day on which the 651  
requester files a mandamus action to recover statutory damages, 652  
up to a maximum of one thousand dollars. The award of statutory 653  
damages shall not be construed as a penalty, but as compensation 654  
for injury arising from lost use of the requested information. 655  
The existence of this injury shall be conclusively presumed. The 656  
award of statutory damages shall be in addition to all other 657  
remedies authorized by this section. 658

The court may reduce an award of statutory damages or not 659  
award statutory damages if the court determines both of the 660  
following: 661

(a) That, based on the ordinary application of statutory 662  
law and case law as it existed at the time of the conduct or 663  
threatened conduct of the public office or person responsible 664  
for the requested public records that allegedly constitutes a 665  
failure to comply with an obligation in accordance with division 666

(B) of this section and that was the basis of the mandamus 667  
action, a well-informed public office or person responsible for 668  
the requested public records reasonably would believe that the 669  
conduct or threatened conduct of the public office or person 670  
responsible for the requested public records did not constitute 671  
a failure to comply with an obligation in accordance with 672  
division (B) of this section; 673

(b) That a well-informed public office or person 674  
responsible for the requested public records reasonably would 675  
believe that the conduct or threatened conduct of the public 676  
office or person responsible for the requested public records 677  
would serve the public policy that underlies the authority that 678  
is asserted as permitting that conduct or threatened conduct. 679

(3) In a mandamus action filed under division (C) (1) of 680  
this section, the following apply: 681

(a) (i) If the court orders the public office or the person 682  
responsible for the public record to comply with division (B) of 683  
this section, the court shall determine and award to the relator 684  
all court costs, which shall be construed as remedial and not 685  
punitive. 686

(ii) If the court makes a determination described in 687  
division (C) (3) (b) (iii) of this section, the court shall 688  
determine and award to the relator all court costs, which shall 689  
be construed as remedial and not punitive. 690

(b) If the court renders a judgment that orders the public 691  
office or the person responsible for the public record to comply 692  
with division (B) of this section or if the court determines any 693  
of the following, the court may award reasonable attorney's fees 694  
to the relator, subject to the provisions of division (C) (4) of 695

this section: 696

(i) The public office or the person responsible for the 697  
public records failed to respond affirmatively or negatively to 698  
the public records request in accordance with the time allowed 699  
under division (B) of this section. 700

(ii) The public office or the person responsible for the 701  
public records promised to permit the relator to inspect or 702  
receive copies of the public records requested within a 703  
specified period of time but failed to fulfill that promise 704  
within that specified period of time. 705

(iii) The public office or the person responsible for the 706  
public records acted in bad faith when the office or person 707  
voluntarily made the public records available to the relator for 708  
the first time after the relator commenced the mandamus action, 709  
but before the court issued any order concluding whether or not 710  
the public office or person was required to comply with division 711  
(B) of this section. No discovery may be conducted on the issue 712  
of the alleged bad faith of the public office or person 713  
responsible for the public records. This division shall not be 714  
construed as creating a presumption that the public office or 715  
the person responsible for the public records acted in bad faith 716  
when the office or person voluntarily made the public records 717  
available to the relator for the first time after the relator 718  
commenced the mandamus action, but before the court issued any 719  
order described in this division. 720

(c) The court shall not award attorney's fees to the 721  
relator if the court determines both of the following: 722

(i) That, based on the ordinary application of statutory 723  
law and case law as it existed at the time of the conduct or 724

threatened conduct of the public office or person responsible 725  
for the requested public records that allegedly constitutes a 726  
failure to comply with an obligation in accordance with division 727  
(B) of this section and that was the basis of the mandamus 728  
action, a well-informed public office or person responsible for 729  
the requested public records reasonably would believe that the 730  
conduct or threatened conduct of the public office or person 731  
responsible for the requested public records did not constitute 732  
a failure to comply with an obligation in accordance with 733  
division (B) of this section; 734

(ii) That a well-informed public office or person 735  
responsible for the requested public records reasonably would 736  
believe that the conduct or threatened conduct of the public 737  
office or person responsible for the requested public records 738  
would serve the public policy that underlies the authority that 739  
is asserted as permitting that conduct or threatened conduct. 740

(4) All of the following apply to any award of reasonable 741  
attorney's fees awarded under division (C) (3) (b) of this 742  
section: 743

(a) The fees shall be construed as remedial and not 744  
punitive. 745

(b) The fees awarded shall not exceed the total of the 746  
reasonable attorney's fees incurred before the public record was 747  
made available to the relator and the fees described in division 748  
(C) (4) (c) of this section. 749

(c) Reasonable attorney's fees shall include reasonable 750  
fees incurred to produce proof of the reasonableness and amount 751  
of the fees and to otherwise litigate entitlement to the fees. 752

(d) The court may reduce the amount of fees awarded if the 753

court determines that, given the factual circumstances involved 754  
with the specific public records request, an alternative means 755  
should have been pursued to more effectively and efficiently 756  
resolve the dispute that was subject to the mandamus action 757  
filed under division (C)(1) of this section. 758

(5) If the court does not issue a writ of mandamus under 759  
division (C) of this section and the court determines at that 760  
time that the bringing of the mandamus action was frivolous 761  
conduct as defined in division (A) of section 2323.51 of the 762  
Revised Code, the court may award to the public office all court 763  
costs, expenses, and reasonable attorney's fees, as determined 764  
by the court. 765

(D) Chapter 1347. of the Revised Code does not limit the 766  
provisions of this section. 767

(E)(1) To ensure that all employees of public offices are 768  
appropriately educated about a public office's obligations under 769  
division (B) of this section, all elected officials or their 770  
appropriate designees shall attend training approved by the 771  
attorney general as provided in section 109.43 of the Revised 772  
Code. In addition, all public offices shall adopt a public 773  
records policy in compliance with this section for responding to 774  
public records requests. In adopting a public records policy 775  
under this division, a public office may obtain guidance from 776  
the model public records policy developed and provided to the 777  
public office by the attorney general under section 109.43 of 778  
the Revised Code. Except as otherwise provided in this section, 779  
the policy may not limit the number of public records that the 780  
public office will make available to a single person, may not 781  
limit the number of public records that it will make available 782  
during a fixed period of time, and may not establish a fixed 783

period of time before it will respond to a request for 784  
inspection or copying of public records, unless that period is 785  
less than eight hours. 786

(2) The public office shall distribute the public records 787  
policy adopted by the public office under division (E)(1) of 788  
this section to the employee of the public office who is the 789  
records custodian or records manager or otherwise has custody of 790  
the records of that office. The public office shall require that 791  
employee to acknowledge receipt of the copy of the public 792  
records policy. The public office shall create a poster that 793  
describes its public records policy and shall post the poster in 794  
a conspicuous place in the public office and in all locations 795  
where the public office has branch offices. The public office 796  
may post its public records policy on the internet web site of 797  
the public office if the public office maintains an internet web 798  
site. A public office that has established a manual or handbook 799  
of its general policies and procedures for all employees of the 800  
public office shall include the public records policy of the 801  
public office in the manual or handbook. 802

(F)(1) The bureau of motor vehicles may adopt rules 803  
pursuant to Chapter 119. of the Revised Code to reasonably limit 804  
the number of bulk commercial special extraction requests made 805  
by a person for the same records or for updated records during a 806  
calendar year. The rules may include provisions for charges to 807  
be made for bulk commercial special extraction requests for the 808  
actual cost of the bureau, plus special extraction costs, plus 809  
ten per cent. The bureau may charge for expenses for redacting 810  
information, the release of which is prohibited by law. 811

(2) As used in division (F)(1) of this section: 812

(a) "Actual cost" means the cost of depleted supplies, 813

records storage media costs, actual mailing and alternative 814  
delivery costs, or other transmitting costs, and any direct 815  
equipment operating and maintenance costs, including actual 816  
costs paid to private contractors for copying services. 817

(b) "Bulk commercial special extraction request" means a 818  
request for copies of a record for information in a format other 819  
than the format already available, or information that cannot be 820  
extracted without examination of all items in a records series, 821  
class of records, or database by a person who intends to use or 822  
forward the copies for surveys, marketing, solicitation, or 823  
resale for commercial purposes. "Bulk commercial special 824  
extraction request" does not include a request by a person who 825  
gives assurance to the bureau that the person making the request 826  
does not intend to use or forward the requested copies for 827  
surveys, marketing, solicitation, or resale for commercial 828  
purposes. 829

(c) "Commercial" means profit-seeking production, buying, 830  
or selling of any good, service, or other product. 831

(d) "Special extraction costs" means the cost of the time 832  
spent by the lowest paid employee competent to perform the task, 833  
the actual amount paid to outside private contractors employed 834  
by the bureau, or the actual cost incurred to create computer 835  
programs to make the special extraction. "Special extraction 836  
costs" include any charges paid to a public agency for computer 837  
or records services. 838

(3) For purposes of divisions (F) (1) and (2) of this 839  
section, "surveys, marketing, solicitation, or resale for 840  
commercial purposes" shall be narrowly construed and does not 841  
include reporting or gathering news, reporting or gathering 842  
information to assist citizen oversight or understanding of the 843

operation or activities of government, or nonprofit educational 844  
research. 845

(G) A request by a defendant, counsel of a defendant, or 846  
any agent of a defendant in a criminal action that public 847  
records related to that action be made available under this 848  
section shall be considered a demand for discovery pursuant to 849  
the Criminal Rules, except to the extent that the Criminal Rules 850  
plainly indicate a contrary intent. The defendant, counsel of 851  
the defendant, or agent of the defendant making a request under 852  
this division shall serve a copy of the request on the 853  
prosecuting attorney, director of law, or other chief legal 854  
officer responsible for prosecuting the action. 855

(H) If a public office denies a request to release a 856  
restricted portion of a body-worn camera recording, as defined 857  
in division (A) (14) of this section, any person may file a 858  
mandamus action in the supreme court, pursuant to its original 859  
jurisdiction under Section 2 of Article IV, Ohio Constitution, 860  
requesting the court to order the release of all or portions of 861  
the recording. If the court determines that the filing 862  
articulates by clear and convincing evidence that the public 863  
interest in the recording substantially outweighs privacy 864  
interests and other interests asserted to deny release, the 865  
court shall issue a writ of mandamus ordering the public office 866  
to release the recording. 867

**Sec. 149.433.** (A) As used in this section: 868

"Act of terrorism" has the same meaning as in section 869  
2909.21 of the Revised Code. 870

"Express statement" means a written statement 871  
substantially similar to the following: "This information is 872

voluntarily submitted to a public office in expectation of 873  
protection from disclosure as provided by section 149.433 of the 874  
Revised Code." 875

"Infrastructure record" means any record that discloses 876  
the configuration of critical systems including, but not limited 877  
to, communication, computer, electrical, mechanical, 878  
ventilation, water, and plumbing systems, security codes, or the 879  
infrastructure or structural configuration of a building. 880

"Infrastructure record" includes a risk assessment of 881  
infrastructure performed by a state or local law enforcement 882  
agency at the request of a property owner or manager. 883

"Infrastructure record" does not mean a simple floor plan 884  
that discloses only the spatial relationship of components of 885  
the building. 886

"Security record" means any of the following: 887

(1) Any record that contains information directly used for 888  
protecting or maintaining the security of a public office 889  
against attack, interference, or sabotage; 890

(2) Any record assembled, prepared, or maintained by a 891  
public office or public body to prevent, mitigate, or respond to 892  
acts of terrorism, including any of the following: 893

(a) Those portions of records containing specific and 894  
unique vulnerability assessments or specific and unique response 895  
plans either of which is intended to prevent or mitigate acts of 896  
terrorism, and communication codes or deployment plans of law 897  
enforcement or emergency response personnel; 898

(b) Specific intelligence information and specific 899  
investigative records shared by federal and international law 900

enforcement agencies with state and local law enforcement and 901  
public safety agencies; 902

(c) National security records classified under federal 903  
executive order and not subject to public disclosure under 904  
federal law that are shared by federal agencies, and other 905  
records related to national security briefings to assist state 906  
and local government with domestic preparedness for acts of 907  
terrorism. 908

(3) An emergency management plan adopted pursuant to 909  
section 3313.536 of the Revised Code. 910

(B) (1) A record kept by a public office that is a security 911  
record is not a public record under section 149.43 of the 912  
Revised Code and is not subject to mandatory release or 913  
disclosure under that section. 914

(2) A record kept by a public office that is an 915  
infrastructure record of a public office, public school, or a 916  
chartered nonpublic school is not a public record under section 917  
149.43 of the Revised Code and is not subject to mandatory 918  
release or disclosure under that section. 919

(3) A record kept by a public office that is an 920  
infrastructure record of a private entity may be exempted from 921  
release or disclosure under division (C) of this section. 922

(C) A record prepared by, submitted to, or kept by a 923  
public office that is an infrastructure record of a private 924  
entity, which is submitted to the public office for use by the 925  
public office, when accompanied by an express statement, is 926  
exempt from release or disclosure under section 149.43 of the 927  
Revised Code for a period of twenty-five years after its 928  
creation if it is retained by the public office for that length 929

of time. 930

(D) Notwithstanding any other section of the Revised Code, 931  
disclosure by a public office, public employee, chartered 932  
nonpublic school, or chartered nonpublic school employee of a 933  
security record or infrastructure record that is necessary for 934  
construction, renovation, or remodeling work on any public 935  
building or project or chartered nonpublic school does not 936  
constitute public disclosure for purposes of waiving division 937  
(B) of this section and does not result in that record becoming 938  
a public record for purposes of section 149.43 of the Revised 939  
Code. 940

**Section 2.** That existing sections 149.43 and 149.433 of 941  
the Revised Code are hereby repealed. 942