

As Introduced

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H. B. No. 424

Representative Antani

Cosponsors: Representatives Terhar, Blessing, Young, Johnson, T., Schaffer

A BILL

To amend section 149.43 of the Revised Code to 1
specify that military records provided by an 2
officer or employee of a township or municipal 3
corporation to the township or municipal 4
corporation for personnel matters are not public 5
records. 6

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

Section 1. That section 149.43 of the Revised Code be 7
amended to read as follows: 8

Sec. 149.43. (A) As used in this section: 9

(1) "Public record" means records kept by any public 10
office, including, but not limited to, state, county, city, 11
village, township, and school district units, and records 12
pertaining to the delivery of educational services by an 13
alternative school in this state kept by the nonprofit or for- 14
profit entity operating the alternative school pursuant to 15
section 3313.533 of the Revised Code. "Public record" does not 16
mean any of the following: 17

(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	46
pertaining to children in its custody released by the department	47
of youth services to the department of rehabilitation and	48
correction pursuant to section 5139.05 of the Revised Code;	49
(m) Intellectual property records;	50
(n) Donor profile records;	51
(o) Records maintained by the department of job and family	52
services pursuant to section 3121.894 of the Revised Code;	53
(p) Peace officer, parole officer, probation officer,	54
bailiff, prosecuting attorney, assistant prosecuting attorney,	55
correctional employee, community-based correctional facility	56
employee, youth services employee, firefighter, EMT, or	57
investigator of the bureau of criminal identification and	58
investigation residential and familial information;	59
(q) In the case of a county hospital operated pursuant to	60
Chapter 339. of the Revised Code or a municipal hospital	61
operated pursuant to Chapter 749. of the Revised Code,	62
information that constitutes a trade secret, as defined in	63
section 1333.61 of the Revised Code;	64
(r) Information pertaining to the recreational activities	65
of a person under the age of eighteen;	66
(s) In the case of a child fatality review board acting	67
under sections 307.621 to 307.629 of the Revised Code or a	68
review conducted pursuant to guidelines established by the	69
director of health under section 3701.70 of the Revised Code,	70
records provided to the board or director, statements made by	71
board members during meetings of the board or by persons	72
participating in the director's review, and all work products of	73
the board or director, and in the case of a child fatality	74

review board, child fatality review data submitted by the board	75
to the department of health or a national child death review	76
database, other than the report prepared pursuant to division	77
(A) of section 307.626 of the Revised Code;	78
(t) Records provided to and statements made by the	79
executive director of a public children services agency or a	80
prosecuting attorney acting pursuant to section 5153.171 of the	81
Revised Code other than the information released under that	82
section;	83
(u) Test materials, examinations, or evaluation tools used	84
in an examination for licensure as a nursing home administrator	85
that the board of executives of long-term services and supports	86
administers under section 4751.04 of the Revised Code or	87
contracts under that section with a private or government entity	88
to administer;	89
(v) Records the release of which is prohibited by state or	90
federal law;	91
(w) Proprietary information of or relating to any person	92
that is submitted to or compiled by the Ohio venture capital	93
authority created under section 150.01 of the Revised Code;	94
(x) Financial statements and data any person submits for	95
any purpose to the Ohio housing finance agency or the	96
controlling board in connection with applying for, receiving, or	97
accounting for financial assistance from the agency, and	98
information that identifies any individual who benefits directly	99
or indirectly from financial assistance from the agency;	100
(y) Records listed in section 5101.29 of the Revised Code;	101
(z) Discharges recorded with a county recorder under	102
section 317.24 of the Revised Code, as specified in division (B)	103

(2) of that section;	104
(aa) Usage information including names and addresses of specific residential and commercial customers of a municipally owned or operated public utility;	105 106 107
(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;	108 109 110
(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;	111 112 113
<u>(dd) Military records provided by an officer or employee of a township or municipal corporation to the township or municipal corporation for personnel matters.</u>	114 115 116
(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:	117 118 119 120 121
(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 reasonably promised;	122 123 124 125
(b) Information provided by an information source or witness to whom confidentiality has been reasonably promised, which information would reasonably tend to disclose the source's or witness's identity;	126 127 128 129
(c) Specific confidential investigatory techniques or procedures or specific investigatory work product;	130 131

(d) Information that would endanger the life or physical 132
safety of law enforcement personnel, a crime victim, a witness, 133
or a confidential information source. 134

(3) "Medical record" means any document or combination of 135
documents, except births, deaths, and the fact of admission to 136
or discharge from a hospital, that pertains to the medical 137
history, diagnosis, prognosis, or medical condition of a patient 138
and that is generated and maintained in the process of medical 139
treatment. 140

(4) "Trial preparation record" means any record that 141
contains information that is specifically compiled in reasonable 142
anticipation of, or in defense of, a civil or criminal action or 143
proceeding, including the independent thought processes and 144
personal trial preparation of an attorney. 145

(5) "Intellectual property record" means a record, other 146
than a financial or administrative record, that is produced or 147
collected by or for faculty or staff of a state institution of 148
higher learning in the conduct of or as a result of study or 149
research on an educational, commercial, scientific, artistic, 150
technical, or scholarly issue, regardless of whether the study 151
or research was sponsored by the institution alone or in 152
conjunction with a governmental body or private concern, and 153
that has not been publicly released, published, or patented. 154

(6) "Donor profile record" means all records about donors 155
or potential donors to a public institution of higher education 156
except the names and reported addresses of the actual donors and 157
the date, amount, and conditions of the actual donation. 158

(7) "Peace officer, parole officer, probation officer,
bailiff, prosecuting attorney, assistant prosecuting attorney, 159
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correctional employee, community-based correctional facility 161
employee, youth services employee, firefighter, EMT, or 162
investigator of the bureau of criminal identification and 163
investigation residential and familial information" means any 164
information that discloses any of the following about a peace 165
officer, parole officer, probation officer, bailiff, prosecuting 166
attorney, assistant prosecuting attorney, correctional employee, 167
community-based correctional facility employee, youth services 168
employee, firefighter, EMT, or investigator of the bureau of 169
criminal identification and investigation: 170

(a) The address of the actual personal residence of a 171
peace officer, parole officer, probation officer, bailiff, 172
assistant prosecuting attorney, correctional employee, 173
community-based correctional facility employee, youth services 174
employee, firefighter, EMT, or an investigator of the bureau of 175
criminal identification and investigation, except for the state 176
or political subdivision in which the peace officer, parole 177
officer, probation officer, bailiff, assistant prosecuting 178
attorney, correctional employee, community-based correctional 179
facility employee, youth services employee, firefighter, EMT, or 180
investigator of the bureau of criminal identification and 181
investigation resides; 182

(b) Information compiled from referral to or participation 183
in an employee assistance program; 184

(c) The social security number, the residential telephone 185
number, any bank account, debit card, charge card, or credit 186
card number, or the emergency telephone number of, or any 187
medical information pertaining to, a peace officer, parole 188
officer, probation officer, bailiff, prosecuting attorney, 189
assistant prosecuting attorney, correctional employee, 190

community-based correctional facility employee, youth services 191
employee, firefighter, EMT, or investigator of the bureau of 192
criminal identification and investigation; 193

(d) The name of any beneficiary of employment benefits, 194
including, but not limited to, life insurance benefits, provided 195
to a peace officer, parole officer, probation officer, bailiff, 196
prosecuting attorney, assistant prosecuting attorney, 197
correctional employee, community-based correctional facility 198
employee, youth services employee, firefighter, EMT, or 199
investigator of the bureau of criminal identification and 200
investigation by the peace officer's, parole officer's, 201
probation officer's, bailiff's, prosecuting attorney's, 202
assistant prosecuting attorney's, correctional employee's, 203
community-based correctional facility employee's, youth services 204
employee's, firefighter's, EMT's, or investigator of the bureau 205
of criminal identification and investigation's employer; 206

(e) The identity and amount of any charitable or 207
employment benefit deduction made by the peace officer's, parole 208
officer's, probation officer's, bailiff's, prosecuting 209
attorney's, assistant prosecuting attorney's, correctional 210
employee's, community-based correctional facility employee's, 211
youth services employee's, firefighter's, EMT's, or investigator 212
of the bureau of criminal identification and investigation's 213
employer from the peace officer's, parole officer's, probation 214
officer's, bailiff's, prosecuting attorney's, assistant 215
prosecuting attorney's, correctional employee's, community-based 216
correctional facility employee's, youth services employee's, 217
firefighter's, EMT's, or investigator of the bureau of criminal 218
identification and investigation's compensation unless the 219
amount of the deduction is required by state or federal law; 220

(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.	251 252
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.	253 254 255 256
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.	257 258 259 260 261 262
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.	263 264 265 266
(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:	267 268 269 270 271
(a) The address or telephone number of a person under the age of eighteen or the address or telephone number of that person's parent, guardian, custodian, or emergency contact person;	272 273 274 275
(b) The social security number, birth date, or photographic image of a person under the age of eighteen;	276 277
(c) Any medical record, history, or information pertaining to a person under the age of eighteen;	278 279

(d) Any additional information sought or required about a 280
person under the age of eighteen for the purpose of allowing 281
that person to participate in any recreational activity 282
conducted or sponsored by a public office or to use or obtain 283
admission privileges to any recreational facility owned or 284
operated by a public office. 285

(9) "Community control sanction" has the same meaning as 286
in section 2929.01 of the Revised Code. 287

(10) "Post-release control sanction" has the same meaning 288
as in section 2967.01 of the Revised Code. 289

(11) "Redaction" means obscuring or deleting any 290
information that is exempt from the duty to permit public 291
inspection or copying from an item that otherwise meets the 292
definition of a "record" in section 149.011 of the Revised Code. 293

(12) "Designee" and "elected official" have the same 294
meanings as in section 109.43 of the Revised Code. 295

(B) (1) Upon request and subject to division (B) (8) of this 296
section, all public records responsive to the request shall be 297
promptly prepared and made available for inspection to any 298
person at all reasonable times during regular business hours. 299
Subject to division (B) (8) of this section, upon request, a 300
public office or person responsible for public records shall 301
make copies of the requested public record available at cost and 302
within a reasonable period of time. If a public record contains 303
information that is exempt from the duty to permit public 304
inspection or to copy the public record, the public office or 305
the person responsible for the public record shall make 306
available all of the information within the public record that 307
is not exempt. When making that public record available for 308

public inspection or copying that public record, the public 309
office or the person responsible for the public record shall 310
notify the requester of any redaction or make the redaction 311
plainly visible. A redaction shall be deemed a denial of a 312
request to inspect or copy the redacted information, except if 313
federal or state law authorizes or requires a public office to 314
make the redaction. 315

(2) To facilitate broader access to public records, a 316
public office or the person responsible for public records shall 317
organize and maintain public records in a manner that they can 318
be made available for inspection or copying in accordance with 319
division (B) of this section. A public office also shall have 320
available a copy of its current records retention schedule at a 321
location readily available to the public. If a requester makes 322
an ambiguous or overly broad request or has difficulty in making 323
a request for copies or inspection of public records under this 324
section such that the public office or the person responsible 325
for the requested public record cannot reasonably identify what 326
public records are being requested, the public office or the 327
person responsible for the requested public record may deny the 328
request but shall provide the requester with an opportunity to 329
revise the request by informing the requester of the manner in 330
which records are maintained by the public office and accessed 331
in the ordinary course of the public office's or person's 332
duties. 333

(3) If a request is ultimately denied, in part or in 334
whole, the public office or the person responsible for the 335
requested public record shall provide the requester with an 336
explanation, including legal authority, setting forth why the 337
request was denied. If the initial request was provided in 338
writing, the explanation also shall be provided to the requester 339

in writing. The explanation shall not preclude the public office 340
or the person responsible for the requested public record from 341
relying upon additional reasons or legal authority in defending 342
an action commenced under division (C) of this section. 343

(4) Unless specifically required or authorized by state or 344
federal law or in accordance with division (B) of this section, 345
no public office or person responsible for public records may 346
limit or condition the availability of public records by 347
requiring disclosure of the requester's identity or the intended 348
use of the requested public record. Any requirement that the 349
requester disclose the requestor's identity or the intended use 350
of the requested public record constitutes a denial of the 351
request. 352

(5) A public office or person responsible for public 353
records may ask a requester to make the request in writing, may 354
ask for the requester's identity, and may inquire about the 355
intended use of the information requested, but may do so only 356
after disclosing to the requester that a written request is not 357
mandatory and that the requester may decline to reveal the 358
requester's identity or the intended use and when a written 359
request or disclosure of the identity or intended use would 360
benefit the requester by enhancing the ability of the public 361
office or person responsible for public records to identify, 362
locate, or deliver the public records sought by the requester. 363

(6) If any person chooses to obtain a copy of a public 364
record in accordance with division (B) of this section, the 365
public office or person responsible for the public record may 366
require that person to pay in advance the cost involved in 367
providing the copy of the public record in accordance with the 368
choice made by the person seeking the copy under this division. 369

The public office or the person responsible for the public record shall permit that person to choose to have the public record duplicated upon paper, upon the same medium upon which the public office or person responsible for the public record keeps it, or upon any other medium upon which the public office or person responsible for the public record determines that it reasonably can be duplicated as an integral part of the normal operations of the public office or person responsible for the public record. When the person seeking the copy makes a choice under this division, the public office or person responsible for the public record shall provide a copy of it in accordance with the choice made by the person seeking the copy. Nothing in this section requires a public office or person responsible for the public record to allow the person seeking a copy of the public record to make the copies of the public record.

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

Any public office may adopt a policy and procedures that it will follow in transmitting, within a reasonable period of time after receiving a request, copies of public records by

United States mail or by any other means of delivery or 401
transmission pursuant to this division. A public office that 402
adopts a policy and procedures under this division shall comply 403
with them in performing its duties under this division. 404

In any policy and procedures adopted under this division, 405
a public office may limit the number of records requested by a 406
person that the office will transmit by United States mail to 407
ten per month, unless the person certifies to the office in 408
writing that the person does not intend to use or forward the 409
requested records, or the information contained in them, for 410
commercial purposes. For purposes of this division, "commercial" 411
shall be narrowly construed and does not include reporting or 412
gathering news, reporting or gathering information to assist 413
citizen oversight or understanding of the operation or 414
activities of government, or nonprofit educational research. 415

(8) A public office or person responsible for public 416
records is not required to permit a person who is incarcerated 417
pursuant to a criminal conviction or a juvenile adjudication to 418
inspect or to obtain a copy of any public record concerning a 419
criminal investigation or prosecution or concerning what would 420
be a criminal investigation or prosecution if the subject of the 421
investigation or prosecution were an adult, unless the request 422
to inspect or to obtain a copy of the record is for the purpose 423
of acquiring information that is subject to release as a public 424
record under this section and the judge who imposed the sentence 425
or made the adjudication with respect to the person, or the 426
judge's successor in office, finds that the information sought 427
in the public record is necessary to support what appears to be 428
a justiciable claim of the person. 429

(9) (a) Upon written request made and signed by a 430

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

(b) Division (B) (9) (a) of this section also applies to 462
journalist requests for customer information maintained by a 463
municipally owned or operated public utility, other than social 464
security numbers and any private financial information such as 465
credit reports, payment methods, credit card numbers, and bank 466
account information. 467

(c) As used in division (B) (9) of this section, 468
"journalist" means a person engaged in, connected with, or 469
employed by any news medium, including a newspaper, magazine, 470
press association, news agency, or wire service, a radio or 471
television station, or a similar medium, for the purpose of 472
gathering, processing, transmitting, compiling, editing, or 473
disseminating information for the general public. 474

(C) (1) If a person allegedly is aggrieved by the failure 475
of a public office or the person responsible for public records 476
to promptly prepare a public record and to make it available to 477
the person for inspection in accordance with division (B) of 478
this section or by any other failure of a public office or the 479
person responsible for public records to comply with an 480
obligation in accordance with division (B) of this section, the 481
person allegedly aggrieved may commence a mandamus action to 482
obtain a judgment that orders the public office or the person 483
responsible for the public record to comply with division (B) of 484
this section, that awards court costs and reasonable attorney's 485
fees to the person that instituted the mandamus action, and, if 486
applicable, that includes an order fixing statutory damages 487
under division (C) (1) of this section. The mandamus action may 488
be commenced in the court of common pleas of the county in which 489
division (B) of this section allegedly was not complied with, in 490
the supreme court pursuant to its original jurisdiction under 491
Section 2 of Article IV, Ohio Constitution, or in the court of 492

appeals for the appellate district in which division (B) of this 493
section allegedly was not complied with pursuant to its original 494
jurisdiction under Section 3 of Article IV, Ohio Constitution. 495

If a requestor transmits a written request by hand 496
delivery or certified mail to inspect or receive copies of any 497
public record in a manner that fairly describes the public 498
record or class of public records to the public office or person 499
responsible for the requested public records, except as 500
otherwise provided in this section, the requestor shall be 501
entitled to recover the amount of statutory damages set forth in 502
this division if a court determines that the public office or 503
the person responsible for public records failed to comply with 504
an obligation in accordance with division (B) of this section. 505

The amount of statutory damages shall be fixed at one 506
hundred dollars for each business day during which the public 507
office or person responsible for the requested public records 508
failed to comply with an obligation in accordance with division 509
(B) of this section, beginning with the day on which the 510
requester files a mandamus action to recover statutory damages, 511
up to a maximum of one thousand dollars. The award of statutory 512
damages shall not be construed as a penalty, but as compensation 513
for injury arising from lost use of the requested information. 514
The existence of this injury shall be conclusively presumed. The 515
award of statutory damages shall be in addition to all other 516
remedies authorized by this section. 517

The court may reduce an award of statutory damages or not 518
award statutory damages if the court determines both of the 519
following: 520

(a) That, based on the ordinary application of statutory 521
law and case law as it existed at the time of the conduct or 522

threatened conduct of the public office or person responsible 523
for the requested public records that allegedly constitutes a 524
failure to comply with an obligation in accordance with division 525
(B) of this section and that was the basis of the mandamus 526
action, a well-informed public office or person responsible for 527
the requested public records reasonably would believe that the 528
conduct or threatened conduct of the public office or person 529
responsible for the requested public records did not constitute 530
a failure to comply with an obligation in accordance with 531
division (B) of this section; 532

(b) That a well-informed public office or person 533
responsible for the requested public records reasonably would 534
believe that the conduct or threatened conduct of the public 535
office or person responsible for the requested public records 536
would serve the public policy that underlies the authority that 537
is asserted as permitting that conduct or threatened conduct. 538

(2) (a) If the court issues a writ of mandamus that orders 539
the public office or the person responsible for the public 540
record to comply with division (B) of this section and 541
determines that the circumstances described in division (C) (1) 542
of this section exist, the court shall determine and award to 543
the relator all court costs. 544

(b) If the court renders a judgment that orders the public 545
office or the person responsible for the public record to comply 546
with division (B) of this section, the court may award 547
reasonable attorney's fees subject to reduction as described in 548
division (C) (2) (c) of this section. The court shall award 549
reasonable attorney's fees, subject to reduction as described in 550
division (C) (2) (c) of this section when either of the following 551
applies: 552

(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 action, a well-informed public office or person responsible for the requested public records reasonably would believe that the conduct or threatened conduct of the public office or person responsible for the requested public records did not constitute a failure to comply with an obligation in accordance with division (B) of this section;

(ii) That a well-informed public office or person

responsible for the requested public records reasonably would 583
believe that the conduct or threatened conduct of the public 584
office or person responsible for the requested public records as 585
described in division (C) (2) (c) (i) of this section would serve 586
the public policy that underlies the authority that is asserted 587
as permitting that conduct or threatened conduct. 588

(D) Chapter 1347. of the Revised Code does not limit the 589
provisions of this section. 590

(E) (1) To ensure that all employees of public offices are 591
appropriately educated about a public office's obligations under 592
division (B) of this section, all elected officials or their 593
appropriate designees shall attend training approved by the 594
attorney general as provided in section 109.43 of the Revised 595
Code. In addition, all public offices shall adopt a public 596
records policy in compliance with this section for responding to 597
public records requests. In adopting a public records policy 598
under this division, a public office may obtain guidance from 599
the model public records policy developed and provided to the 600
public office by the attorney general under section 109.43 of 601
the Revised Code. Except as otherwise provided in this section, 602
the policy may not limit the number of public records that the 603
public office will make available to a single person, may not 604
limit the number of public records that it will make available 605
during a fixed period of time, and may not establish a fixed 606
period of time before it will respond to a request for 607
inspection or copying of public records, unless that period is 608
less than eight hours. 609

(2) The public office shall distribute the public records 610
policy adopted by the public office under division (E) (1) of 611
this section to the employee of the public office who is the 612

records custodian or records manager or otherwise has custody of 613
the records of that office. The public office shall require that 614
employee to acknowledge receipt of the copy of the public 615
records policy. The public office shall create a poster that 616
describes its public records policy and shall post the poster in 617
a conspicuous place in the public office and in all locations 618
where the public office has branch offices. The public office 619
may post its public records policy on the internet web site of 620
the public office if the public office maintains an internet web 621
site. A public office that has established a manual or handbook 622
of its general policies and procedures for all employees of the 623
public office shall include the public records policy of the 624
public office in the manual or handbook. 625

(F) (1) The bureau of motor vehicles may adopt rules 626
pursuant to Chapter 119. of the Revised Code to reasonably limit 627
the number of bulk commercial special extraction requests made 628
by a person for the same records or for updated records during a 629
calendar year. The rules may include provisions for charges to 630
be made for bulk commercial special extraction requests for the 631
actual cost of the bureau, plus special extraction costs, plus 632
ten per cent. The bureau may charge for expenses for redacting 633
information, the release of which is prohibited by law. 634

(2) As used in division (F) (1) of this section: 635

(a) "Actual cost" means the cost of depleted supplies, 636
records storage media costs, actual mailing and alternative 637
delivery costs, or other transmitting costs, and any direct 638
equipment operating and maintenance costs, including actual 639
costs paid to private contractors for copying services. 640

(b) "Bulk commercial special extraction request" means a 641
request for copies of a record for information in a format other 642

than the format already available, or information that cannot be 643
extracted without examination of all items in a records series, 644
class of records, or database by a person who intends to use or 645
forward the copies for surveys, marketing, solicitation, or 646
resale for commercial purposes. "Bulk commercial special 647
extraction request" does not include a request by a person who 648
gives assurance to the bureau that the person making the request 649
does not intend to use or forward the requested copies for 650
surveys, marketing, solicitation, or resale for commercial 651
purposes. 652

(c) "Commercial" means profit-seeking production, buying, 653
or selling of any good, service, or other product. 654

(d) "Special extraction costs" means the cost of the time 655
spent by the lowest paid employee competent to perform the task, 656
the actual amount paid to outside private contractors employed 657
by the bureau, or the actual cost incurred to create computer 658
programs to make the special extraction. "Special extraction 659
costs" include any charges paid to a public agency for computer 660
or records services. 661

(3) For purposes of divisions (F) (1) and (2) of this 662
section, "surveys, marketing, solicitation, or resale for 663
commercial purposes" shall be narrowly construed and does not 664
include reporting or gathering news, reporting or gathering 665
information to assist citizen oversight or understanding of the 666
operation or activities of government, or nonprofit educational 667
research. 668

Section 2. That existing section 149.43 of the Revised 669
Code is hereby repealed. 670