

PUBLIC RECORDS POLICY OF ORANGE TOWNSHIP, DELAWARE COUNTY

Introduction:

It is the policy of Orange Township in Delaware County, Ohio ("Township") to strictly adhere to the state's Public Records Act as well as other state and federal laws. Orange Township's position is that openness leads to a more informed citizenry, more transparent government, and sounder public policy.

Ohio's Public Records Act imposes two primary obligations upon public offices:

1. Provide prompt inspection of public records (R.C. 149.43(B)(1)); and
2. Provide copies of public records within a reasonable period of time (R.C. 149.43(B)(1)).

The Public Records Act evolved from the principle that Ohio's citizens are entitled to access the records of their government. We agree that, to advance that principle, the Public Records Act should be interpreted liberally in favor of disclosure.

Section 1. Public records

Under Ohio law, public offices may only create records that are necessary for the adequate and proper documentation of the organization, functions, policies, decisions, procedures and essential transactions of the agency involved and for the protection of the legal and financial rights of the state and persons directly affected by the agency's activities. (R.C. 149.40).

In accordance with the Ohio Revised Code and court rulings, "records" are defined as those items that meet all of the following:

1. any document, device, or item, regardless of physical form or characteristic, including an electronic record (which includes but is not limited to e-mail or other record created, generated, sent, communicated, received, or stored by electronic means (R.C. § 1306.01(G));
2. that is created or received by, or coming under the jurisdiction of a public office; and
3. that documents the organization, functions, policies, decisions, procedures, operations, or other activities of the office. (R.C. § 149.011(G)).

The determination of whether a specific item constitutes a "record" will depend on the facts and circumstances surrounding the particular item requested. The Ohio Supreme Court has imposed an actual use standard in defining a "record," which means that an item is not automatically a "record" simply because the public office could (but did not) use a document it received to carry out its duties and responsibilities.

Furthermore, public offices are not required to create new records to respond to a public records request, even if it is only a matter of compiling information from existing records.

Section 1.1

It is the policy of the Township that, as required by Ohio law, records will be organized and maintained so that they are made available for inspection to any person at all reasonable times during regular business hours. (R.C. 149.43(B)(2)). The respondent to public records requests directed to the Township shall be the Township Administrator ("Respondent"). All requests for records shall be made or forwarded to that individual, whose contact information is provided in Section 6 of this policy. The Respondent may, in their discretion, designate another to perform some or all of their duties as the Respondent, but shall retain the responsibilities and authorities provided in this policy.

Copies will be made available upon request within a reasonable period of time. (R.C. 149.43(B)(1)).

A current record retention schedule will be readily available to the public upon request. (R.C. 149.43(B)(2))

Section 1.2

Not all of the Township's records are "public records." Certain records are exempt from the Public Records Act. Exempt records include records: (1) the release of which is *prohibited* by state or federal law, or 2) that are subject to an express exception set forth in Ohio's Public Records Act, which may be released only if the Township decides to waive the express exception.

Examples of records, the release of which is *prohibited* by state or federal law, include, but are not limited to, the following:

Attorney-client privileged information;

Records of a Certified Public Accountant or public accountant in the performance of an audit of a public office (R.C. 4701.19(B));

Federal tax returns (26 U.S.C. 6103(a));

Criminal background information and other law enforcement information on the LEADS/CCH/NCIC computer database (42 U.S.C. 3789g);

Records that have been sealed pursuant to a statutorily authorized court order (*i.e.* R.C. 2953.52);

Peace officer's home address during the pendency of a criminal case in which the officer is a witness or arresting officer (R.C. 2921.24(A)); and

Employees' and their family members records that were created for purposes of the Family Medical Leave Act or the Americans with Disabilities Act (29 CFR 825.500(g) and 1630.14(c)(1)).

Examples of records that are subject to an express exception set forth in Ohio's Public Records Act, which may be released only if the Township decides to waive the express exception include, but are not limited to, the following:

Peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, EMT, or investigator of the bureau of criminal identification and investigation residential and familial information (R.C. 149.43(A)(1)(p));

Records that pertain to a patient's medical history, diagnosis, prognosis, or medical condition and that were general and maintained in the process of medical treatment (R.C. 149.43(A)(1)(a));

Records that contain information that was specifically compiled in reasonable anticipation of, or in defense of, a civil or criminal action or proceeding (R.C. 149.43(A)(1)(g)); and

Records that pertain to a law enforcement matter of a criminal, quasi-criminal, civil, or administrative nature and that, if released, would create a high probability of disclosing any of the following (1) the identity of an uncharged suspect, (2) the identity of a confidential source, (3) specific confidential investigatory techniques or procedures; (4) specific investigative work

product; or (5) information that would endanger the life or physical safety of law enforcement personnel, a crime victim, a witness, or a confidential source (R.C. 149.43(A)(1)(h)).

The exemptions to the Public Records Act will be narrowly construed by the Respondent in the favor of disclosure. The Respondent may seek a legal review prior to determining whether or not an exception applies.

Section 2. Record requests

Each request for public records should be evaluated for a response using the following guidelines:

Section 2.1

Although no specific language is required to make a request, the requester must at least identify the records requested with sufficient clarity to allow the Respondent to identify, retrieve, and review the records. If a requester makes an ambiguous or overly broad request or has difficulty in making a request for copies or inspection of public records such that the Respondent cannot reasonably identify what public records are being requested, then the Respondent may deny the request. In such case, the Respondent will provide the requester with an opportunity to revise the request by informing him/her of the manner in which records are maintained by the Township and accessed in the ordinary course of its' duties. (R.C. 149.43(B)(2)).

Section 2.2

The requester does not have to put a records request in writing, and does not have to provide his/her identity or the intended use of the requested public record. However, the Respondent may ask for a written request and may ask for the requestor's identity and/or intended use of the information requested if (1) it would benefit the requestor by helping the Respondent identify, locate or deliver the records being sought, and (2) the requestor is informed that a written request and the requestor's identity and intended use of the information requested are not required. (R.C. 149.43(B)(5)).

Section 2.3

The Respondent will permit a requester to choose to have the public record duplicated upon paper, upon the same medium which the Township keeps it, or upon any other medium which the Respondent determines that it reasonably can be duplicated as an integral part of the normal operations of the Respondent. The Respondent is not required to allow the requester to make the copies of the public record. (R.C. 149.43(B)(6)).

Section 2.4

Public records should be available for inspection at all reasonable times during regular business hours. Public records should be made available for inspection promptly. (R.C. 149.43(B)(1)). To the extent that a Township office may operate 24-hours-a-day, the records of that office will be made available for inspection during normal administrative hours.

Copies of public records should be made available within a reasonable period of time. (R.C. 149.43(B)(1)).

The determination of the terms "prompt" and "reasonable" take into account the volume of records requested; the proximity of the location where the records are stored; and the necessity for any legal review of the records requested.

Section 2.5

Each request should be evaluated for an estimated length of time required to gather the records. Routine requests for records should be satisfied immediately if feasible to do so. Routine requests include, but are not limited to, meeting minutes (both in draft and final form), resolutions, budgets, etc.

Section 2.6

By Ohio law, the Township is not required to permit a person who is incarcerated pursuant to a criminal conviction or a juvenile adjudication to inspect or to obtain a copy of any public record concerning a criminal investigation or prosecution or concerning what would be a criminal investigation if the subject of the investigation or prosecution were an adult, unless the judge who imposed the sentence or made the adjudication with respect to the person, or the judge's successor in office, finds that the information sought in the public record is necessary to support what appears to be a justiciable claim of the person. R.C. 149.43(B) (8).

Section 2.7

The Respondent, in response to a written request made and signed by a journalist, which must include the journalist's name and title and the name and address of the journalist's employer and which states that the disclosure of the information sought would be in the public interest, will provide the address of the actual personal residence of anyone employed by the Township as a peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, EMT, or investigator of the bureau of criminal identification and investigation and, if such employee's spouse, former spouse, or child is employed by a public office, the name and address of that public office. (R.C. 149.43(B)(9)).

Section 2.8

Any denial of public records requested, in part or in whole, should include an explanation, including legal authority, as to why the request was denied. If the initial request was provided in writing, the explanation for denial will be provided to the requester in writing. (R.C. 149.43(B)(3)).

If portions of a record are public and portions are exempt, the exempt portions should be redacted and the rest released. If there are redactions, the Respondent will notify the requester of any redaction or make the redaction plainly visible. Each redaction should be accompanied by a supporting explanation, including legal authority, as to why the redaction was made. (R.C. 149.43(B)(1) and (3)).

The explanations provided pursuant to the foregoing will not preclude the Township from relying on additional reasons or legal authority in defending an action commenced to compel the production of records or exempt portions of records that are denied.

Section 2.9

Neither the Township nor the Respondent have any duty to provide records acquired after a request for records is complete.

Section 3. Costs for Public Records

Those seeking public records should be charged only the actual cost of making copies, unless the cost is otherwise set by statute. (R.C. 149.43(B)(1)). Employee time should not be calculated into the charge for copying a public record. However, in the event that circumstances make it reasonable for the Respondent to hire an outside contractor to make copies of requested records, the requester

will be charged the actual cost paid to the outside contractor for the copying service. (R.C.149.43(F)(2)(a)). These circumstances may include, but not be limited to, a lack of in-house copying or photocopying resources or labor.

The Respondent has no duty to provide copies of public records free of charge to someone who indicates an inability or unwillingness to pay for them.

Section 3.1 The following fee schedule is established for providing in-house copies or reproductions of public records:

Media Type	Unit	Cost per Unit
Letter Sized (BW) Paper Copy (Single/Double Sided)	Page	\$0.05
Letter or Legal Sized Paper Copy (Color)	Page	\$0.10
Legal Sized Paper Copy (BW)	Page	\$0.10
Certified Paper Copy	Page	\$1.00
Audio Tape	Tape	\$1.00
CD/CD Rom/DVD	Disk	Actual Cost
Email Documents	Various Forms	See Cost per Unit Above

The Respondent shall charge the actual cost of material for media not listed in the fee schedule above.

As a result of security issues and to preserve the integrity of the Township's computer systems, the Respondent will not accept blank media supplied by the requesting party. The Respondent will supply the media. The cost of the media is included in the fee schedule above or, if not contemplated in the fee schedule above, the media will be supplied at actual cost.

Section 3.2

The Respondent may require a requester to pay in advance the cost involved in providing the copy of the public record, as requested. (R.C. 149.43(B)(6)).

Section 3.3

Upon request, the Respondent will provide copies of public records to a requester by United States mail or by any other delivery means or transmission that the Respondent deems reasonable. In such a case, the Respondent may require the requester 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. (R.C. 149.43(B)(7)).

The Respondent will limit to ten (10) the number of copies of public records provided per month to a requester by United States Mail, unless the requester certifies in writing that he/she does not intend to use or forward the requested records, or the information contained in them, for commercial purposes. (The word “commercial” should be narrowly construed and does not include reporting or gathering news, reporting or gathering information to assist citizen oversight or understanding of the operation or activities of government, or nonprofit educational research). (R.C. 149.43(B)(7)).

Section 3.4

There may be instances when the Respondent may be able to provide copies made in-house without disrupting their normal operations, but only over an extended period of time. In that instance, the Respondent may offer the requester the options to: (1) have the documents produced more quickly

by using an external private contractor, with the requester being charged the actual cost paid to the outside contractor; or (2) have the documents produced in-house by the Township's normal staff and equipment in a more time consuming manner.

Section 4. Failure to respond to a public records request

The Township recognizes the legal and non-legal consequences of failure to properly respond to a public records request. In addition to the distrust in government that failure to comply may cause, the Township's failure to comply with a request may result in the requester doing one of the following, but not both: (1) Filing a complaint with the Clerk of the Court of Claims or the Clerk of the Court of Common Pleas under section 2743.75 of the Revised Code, pursuant to Section 149.43(C)(1)(a); or (2) Commencing a mandamus action against the Township in either the Court of Common Pleas, in the Court of Appeals, or in the Supreme Court of Ohio pursuant to Section 149.43(C)(1)(b).

Section 5. Log of public records requests

The Respondent shall maintain a log of all public records requests received by the Township. The Respondent shall log-in requests as received and log-out requests when the response is provided/sent to the requestor.

Section 6. Contact information for Respondent

Please direct all public records requests to:

Physical Address

Orange Township Records Respondent
Orange Township Administrator
1680 E. Orange Rd.
P.O. Box 397
Lewis Center, OH 43035

Telephone: (740) 548-5430

Email: recordsrequest@orangetwp.org

Note that making public records requests using the above contact information is preferred. Use of this contact information is not required. Requests otherwise received by the Township will be responded to, but however received, should be forwarded to the Respondent using the above contact information.