



COUNTY ADVISORY BULLETIN

CAB

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SENATE BILL 78 OF THE 123RD GENERAL ASSEMBLY REVISES OHIO PUBLIC RECORDS LAW; REQUIRES PUBLIC OFFICES TO FULFILL RECORD REQUESTS BY MAIL IF ASKED; ALLOWS RECORD SEEKERS TO SPECIFY FORM OF RECORD TO BE PROVIDED; EXEMPTS PERSONAL AND FAMILY INFORMATION OF PEACE OFFICERS; AND LIMITS RECORD REQUESTS BY PRISONERS.

Effective Date: December 16, 1999.

Revised Code Sections Affected: 149.43.

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OVERVIEW

Senate Bill 78 (SB 78) of the 123rd General Assembly became effective on December 16, 1999. All of the changes made to Ohio Public Records Law (Ohio Revised Code Section 149.43) by SB 78 apply only to requests for inspection, copying, or release of records that are made on or after December 16, 1999.

The new law makes the following changes in the Ohio Public Records Law:

1. With certain exceptions, it requires public offices and responsible persons, upon request, to send copies of public records to the record seeker via United States mail. **This change is discussed in Section 1 below.** The model resolution that is included with this CAB may be used by board of

- county commissioners in implementing this section of the new law.
2. With certain exceptions, it allows a record seeker to choose the medium in which he or she wishes to receive the public record. **This change is discussed in Section 2 below.**
 - 3/4. SB 78 creates a new exception to the Public Records Law by generally exempting “peace officer residential and familial information” from disclosure. **This change is discussed in Sections 3 and 4 below.**
 5. SB 78 restricts the ability of juvenile and adult incarcerated persons (“prisoners”) to request and receive copies of public records related to their prosecution and sentencing. **This change is discussed in Section 5 below.**
 6. SB 78 also clarifies the terminology used in the Public Records Law to specify that responsible persons **and** public offices are obligated to maintain public records and make them available for inspection. SB 78 also replaces the term “governmental units” in the Public Records Law with the term “public offices.” ORC 149.43 (R)(1) and (C).

If you have any questions or need more information on SB 78, please contact Doug Putnam, CCAO Research and Information Manager, at 614/221-5627 or dputnam@ccao.org.

1. COMPLYING WITH PUBLIC RECORDS REQUESTS BY MAIL - ORC 149.43 (R)(3)

SB 78 requires any public office or responsible person, upon request, to transmit a copy of a public record by United States mail within a reasonable time after receiving the request for the copy.

There are four points to keep in mind when considering how to deal with this new mandate:

1. A public office or responsible person may **require** the person making a mail request to pay in advance the cost of postage, and other supplies used in the mailing;
2. A public office may adopt a policy and procedures that it and responsible persons will follow in fulfilling mail requests;
3. If a public office adopts such a policy and procedures, it may limit under its terms the number of mail requests by one person that will be fulfilled to a maximum of **ten per month**, unless that person certifies to the public office in writing that he or she does not intend to use the requested records for commercial purposes, or to forward the requested records to another person who will use them for commercial purposes. If that certification is provided to the satisfaction of the public office, then there is no limit to the number of mail requests that may be fulfilled on behalf of a single person.
4. For the purposes of determining whether to fulfill mail requests for public

records “commercial” is defined as “profit-seeking production” or the “buying or selling of any good, service or other product.” ORC 149.43 (E)(2)(C).

The term “commercial” does not include:

1. Reporting or gathering news;
2. Reporting of gathering information to assist citizen oversight or understanding of the operation or activities of government; or
3. Engaging in nonprofit educational research. ORC 149.43 (B)(3).

2. RECORD SEEKER’S CHOICE OF MEDIUM - ORC 149.43 (B)(2)

SB 78 allows a person who is seeking to obtain a copy of a public record to request that the record be provided on either: 1) paper, 2) in the same medium in which the public office or responsible person keeps the record, or 3) in any other medium that the public office or responsible person determines can reasonably be duplicated as an integral part of normal operations. When a record seeker chooses one of the options provided for in ORC 149.43(B)(2), the public office or person must provide the record in accordance with that choice.

Please note that this new language does **not** require a public office or responsible person to do any of the following in response to a new records requests: 1) create new information; 2) create a new analysis of existing information; 3) store records in a particular medium; or 4) reprogram a computer to produce any particular compilation of information that did not exist previously.

3. NEW EXEMPTION FROM DISCLOSURE FOR “PEACE OFFICER RESIDENTIAL AND FAMILIAL INFORMATION” - ORC 149.43(A)(1)(p), ORC 149.43(A)(7)

SB 78 creates a new exception to the Public Records Law under ORC 149.43(A)(1). This exception states that any record that contains “peace officer residential and familial information” is not considered a public record under state law and, except for a journalist’s request that meets the criteria set for in SB 78, is not required to be disclosed.

For the purpose of this exception, “peace officer” has the same meaning as in the Peace Officer Training Commission Law (ORC 109.71), except that “peace officer” does not include the sheriff of a county, or a supervisory employee who, whenever a sheriff is absent, is authorized to exercise the authority and perform the duties of a sheriff.

The new exception is one of the most explicitly defined of the sixteen that now are contained in the Public Records Law. “Peace officer residential and familial information” is defined as information that discloses **any** of the following:

1. The address of the actual personal residence of a peace officer, except for the state or political subdivision in which a peace officer resides;

2. Information compiled from referral to or participation in an employee assistance program;
3. 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;
4. The name of any beneficiary of employment benefits, including but not limited to, life insurance benefits, provided to a peace officer by the peace officer's employer;
5. The identity and amount of any charitable or employment benefit deduction made by the peace officer's employer from the peace officer's compensation unless the amount of the deduction is required by state or federal law;
6. 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.

4. JOURNALIST REQUESTS TO OBTAIN PEACE OFFICER INFORMATION SHIELDED FROM DISCLOSURE UNDER SB 78 - ORC 149.43(B)(5)

SB 78 allows "journalists" to submit written requests to public record holders for the release of certain peace officer information that otherwise is exempted from disclosure under the new law. A journalist may not direct written requests to any public office or responsible person that does **not** employ that specified peace officer.

The written request must include the journalist's name and title, the name and address of the journalist's employer, and a statement that disclosure of the information sought would be in the public interest.

For the purposes of this provision, a "journalist" means any person "engaged by any news medium.....for the purpose of gathering, processing, transmitting, compiling, editing or disseminating information for the general public."

A journalist may submit these written requests to the public office or responsible person who has custody of the records of **an agency that employs the peace officer who is the subject of the request.**

Upon receiving this request, a public office or responsible person **must** disclose the following information about a peace officer that it employs:

- 1) the address of the actual personal residence of the police officer; and
- 2) the name and address of the **employer** of a peace officer's spouse, former spouse, or child, **if** that spouse, former spouse, or child is employed by a public office. SB 78 does not contain a definition of public office for this purpose.

All of the other peace officer residential and familial information that is listed in Section 3 above remains exempt from disclosure.

5. LIMITS ON PUBLIC RECORDS RECEIVED BY PRISONERS - ORC 149.43(B)(1)(4)

SB 78 imposes new restrictions on access to public records by incarcerated persons. Generally, it states that a public office or responsible person is not required to permit an incarcerated person to inspect or obtain a copy of any public record concerning a criminal investigation or prosecution. This general rule applies to incarcerated adults and juveniles.

There is one exception to this general rule. Adult and juvenile prisoners may still request and receive information if 1) it is subject to release as a public record, and 2) the judge who imposed sentence on the adult or juvenile prisoner, or that judge's successor in office, determines that the information sought "is necessary to support what appears to be a justiciable claim of the person" making the request.

RESOLUTION TO ADOPT A POLICY AND PROCEDURES FOR FULFILLING PUBLIC RECORDS REQUESTS BY U.S. MAIL

This model resolution was prepared by the County Commissioners Association of Ohio (CCAO). For additional copies please contact Doug Putnam, CCAO Research and Information Manager at 614-221-5627 or dputnam@ccao.org.

Please note that Senate Bill 78 does **not** require public offices to adopt this policy and procedures. However, if a public office wishes to limit the number of public record requests that can be fulfilled by United States mail for a single individual to ten per month, then the public office must adopt a policy and procedures like the one below.

M. _____ moved the adoption of the following resolution:

WHEREAS, Ohio Revised Code section 149.43, as amended by Senate Bill 78 of the 123rd General Assembly, requires public offices to transmit copies of public records by United States mail, if requested to do so, effective December 16, 1999; and

WHEREAS, Senate Bill 78 authorizes public offices to adopt a policy and procedures that it will follow in transmitting copies of public records by United States mail; and

WHEREAS, the _____ County Board of Commissioners is a public office that is required to transmit copies of public records by United States mail if requested to do so, effective December 16, 1999; therefore be it

RESOLVED, that the _____ County Board of Commissioners hereby adopts a policy and procedures for transmitting copies of public records by United States mail, and be it further

RESOLVED, that this policy and procedures shall consist of the following provisions:

1. The person asking for copies of public records shall be required to pay in advance the cost of postage and other supplies used in the mailing;
2. The number of record requests from one person that will be fulfilled by United States mail shall be limited to ten per month, unless the person certifies in writing to the County Board of Commissioners that he or she does not intend to use the requested records for commercial purposes or to forward the requested records to another person who will use them for commercial purposes;
3. For the purpose of determining whether to limit the number of public records requests to be fulfilled by mail to ten per month per person, the word “commercial” is defined as “profit-seeking production” or the buying or selling of any good, service, or other product,” as required by Ohio Revised Code section 149.43 (B) (3) and (E) (2) (C);
4. For the purpose of determining whether to limit the number of public record requests to be fulfilled by mail to ten per month per person, the word “commercial,” as required by Ohio Revised Code section 149.43 (B) (3), shall not include a) reporting or gathering of news, b) reporting or gathering of information to assist citizen oversight or understanding of the operation or activities of government; or c) nonprofit educational research.
5. All requests for public records to be fulfilled by United States mail shall be sent within a reasonable period of time and copies of the requested records shall be made available at cost, as required by Ohio Revised Code sections 149.43 (B) (1) and 149.43 (B) (3); and be it further.

RESOLVED, that this policy and procedures for fulfilling public records requests by mail shall apply to all requests for records made on or after December 16, 1999, which is the effective date of Senate Bill 78; and be it finally

RESOLVED, that a certified copy of this resolution and the policy and procedures contained within it shall be sent immediately to all offices under the direct supervision of the _____ County Board of Commissioners.

Upon roll call on the adoption of the resolution, the vote was as follows:

Adopted: