

## **THE PORTAGE COUNTY PROSECUTOR'S OFFICE**

### **PUBLIC RECORDS POLICY**

**This policy is not intended to be legal advice. The policy addresses the requirements imposed by Ohio Revised Code 149.43(E)(2) mandating that each public office have a public records policy located: (1) at every location in which the public may access the public office's records; (2) in the public office's policies and procedures manual; and (3) with each of the public office's records custodians.**

#### **A. MISSION STATEMENT**

Openness leads to a better-informed citizenry, which leads to better government and better public policy. Consistent with the premise that government at all levels exists first and foremost to serve the interests of the people, it is the mission and intent of the Portage County Prosecutor's Office to at all times fully comply with and abide by both the spirit and the letter of Ohio's Public Records Act. All exemptions to openness are to be construed in their narrowest sense and any denial of public records in response to a valid request must be accompanied by an explanation, including legal authority, as outlined in the Ohio Revised Code. If the request is in writing, the explanation must also be in writing.

#### **B. DEFINING PUBLIC RECORDS**

1. A "record" is defined to include the following: A document in any format -paper, electronic (including, but not limited to, business e-mail) - that is created, received by, or comes under the jurisdiction of the public office that documents the organization, functions, policies, decisions, procedures, operations, or other activities of the office. The public office is 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.
2. A "public record" is a "record" that is being kept by this office at the time a public records request is made, subject to applicable exemptions from disclosure under Ohio or federal law. All public records must be organized and maintained in such a way that they can be made available for inspection and copying.
3. All records of the Portage County Prosecutor's Office are public unless they are specifically exempt from disclosure under the Ohio Revised Code or case law. Record retention schedules are to be updated regularly and posted prominently.
4. A copy of the most recent edition of the "Ohio Sunshine Laws Manual" is available via the Attorney General's website the purpose of keeping employees of the office and the public educated as to the office's obligations under Ohio's Public Records Act, Ohio's Open Meetings Act, records retention laws, and the Personal Information Systems Act.

#### **C. RESPONSE TIMEFRAME**

1. Public records are to be available for inspection during regular business hours, with the exception of published holidays. Each request should be evaluated for an estimated length of time required to gather the records. Public records must be made available for inspection promptly. Copies of public records must be made available within a reasonable period of time. "Prompt" and "reasonable" take into account the volume of records requested, the

proximity of the location where the records are stored, the necessity for any legal review and redaction, and other facts and circumstances of the records requested.

2. It is the goal of the public office that all requests for public records should be satisfied or be acknowledged in writing or, if feasible, satisfied within three business days following the office's receipt of the request. If a request is deemed significantly beyond "routine," such as seeking a voluminous number of copies or requiring extensive research, the acknowledgement should include an estimated number of business days it will take to satisfy the request, an estimated cost if copies are requested, and any items within the request that may be exempt from disclosure.

#### **D. HANDLING REQUESTS**

1. No specific language is required to make a request for public records. However, the requester must at least identify the records requested with sufficient clarity to allow the office to identify, retrieve, and review the records. If it is not clear or overly broad as to what records are being sought, or if the requester has difficulty in making a request, or the office cannot reasonably identify what public records are being requested, the request may be denied. But the office must then provide the requester an opportunity to revise the request by informing the requester of the manner in which the office keeps its records and accessed by the office.
2. The requester does not have to put a records request in writing and does not have to provide his or her identity or the intended use of the requested public record(s). It is this office's general policy that this information is not to be requested. However, the law does permit the office to ask for a written request, the requester's identity, and/or the intended use of the information requested, but only if: (1) a written request or disclosure of identity or intended use would benefit the requester by enhancing the office's ability to identify, locate, or deliver the public records that have been requested; and (2) the requester is first told that a written request is not required; and (3) that the requester may decline to reveal the requester's identity or intended use.
3. If the public office receives a request for a record that it does not maintain or the request is for a record which is no longer maintained, the requester shall be so notified in writing.
4. The requester can choose to have the record on paper, in the same form as the public office keeps it, or on any medium upon which the public office determines the record can "reasonably be duplicated as an integral part of the normal operations of the public office."
5. In processing the request, the office does not have an obligation to create new records or perform a search or research the information in the office's records. An electronic record is deemed to exist so long as a computer is already programmed to produce the record through the office's standard use of sorting, filtering, or queying features. Although not required by law, the office should consider generating new records when it makes sense and is practical under the circumstances.
6. In processing a request for inspection of a public record, an office employee may accompany the requester during inspection to make certain original records are not taken or altered.

7. A requester seeking copies of public records is not permitted to make their own copies of the requested records. This measure is to protect the integrity of the original document.
8. Generally, the confidential nature of certain types of information or records precludes their release. Federal and state law provides numerous exemptions to the general rule that disclosure of public records is mandatory. However, most of the exemptions do not, by themselves, prohibit the release of the prescribed records. Rather, these records merely are excluded from the general rule of mandatory disclosure. In the event a request is made to inspect or obtain a copy of a record maintained by the public office whose release may be prohibited or exempted by either state or federal law, the request shall be reviewed, and the requester shall be advised that their request is being reviewed to ensure that exempted information is not improperly released.
9. If the office withholds, redacts, or otherwise denies requested records, it must provide an explanation for each redaction, including citations to legal authority, for the denial(s). "Redaction" means obscuring or deleting any information that is exempt from the duty to permit public inspections or copying from an item that otherwise meets the definition of a "record." If the initial request was made in writing, the explanation must also be in writing. If portions of a record are public and portions are exempt, the exempt portions may be redacted, and the rest must be released. When making public records available for public inspection or copying, the office shall notify the requester of any redaction or make the redaction plainly visible.
10. The office may limit the number of records requested by a person that the office will transmit by United States mail to ten per month, unless the person certifies to the office in writing that the person does not intend to use or forward the requested records, or the information contained in them, for commercial purposes.
11. An incarcerated person may receive public records, but only if the records concern a criminal investigation and strict guidelines must be followed. The records must be "public records" which are not subject to an exemption from disclosure and the incarcerated person must have secured a finding from the judge who imposed the sentence of incarceration (or that judge's successor) that the information sought in the public record is necessary to support a justifiable claim of the person.

## **E. ELECTRONIC RECORDS**

1. Records in the form of e-mail, text messaging, and instant messaging, including those sent and received via a hand-held communications device, are to be treated in the same fashion as records in other formats, such as paper or audiotape.
2. Public record content transmitted to or from private accounts, or personal devices is subject to disclosure. All employees or representatives of this office are required to retain their e-mail records and other electronic records in accordance with applicable records retention schedules. These records shall be available for inspection and copying in accordance with the Public Records Act.

## **F. COSTS FOR PUBLIC RECORDS**

1. Those seeking public records may be charged only the actual cost of making copies, not labor. The charge for paper copies is \$ 0.10 per page. The charge for electronic files downloaded to a compact disk is \$ 1.00 per disk. There is no charge for records that are e-mailed. These fees are subject to change.
2. Requesters may ask that documents be delivered to them. They may be charged the actual cost of the postage and mailing supplies, or other actual costs of the delivery.
3. A requester may be required to pay in advance for the actual costs involved in providing the copy. The requester may choose to whether to have the record duplicated upon paper, upon the same medium on which the public record is kept, or upon any other medium on which the office determines that the record can reasonably be duplicated as an integral part of the office's normal operations.

## **G. MANAGING RECORDS**

1. Portage County's records are subject to record retention schedules. The current schedules are available on the Portage County web site and at each County office, locations readily available to the public as required by Ohio Revised Code §149.43(B)(2).
2. Each public office shall:
  - a. Ensure that all personnel become and remain fully trained in the provisions of the Public Records and Open Meeting Acts;
  - b. Adopt policies that encourage employees to immediately report incidents of non-compliance from the acts that they may observe;
  - c. Do nothing that abridges the public's right to obtain information about their government or that inhibits or discourages citizens from doing so;
  - d. Do everything possible to aid those who are seeking information, including but not limited to fully explaining the scope and operation of the Public Records and Open Meeting Acts and assisting citizens in the formulation of requests;
  - e. Construe the provisions of the Public Records and Open Meeting Acts in a manner that favors compliance with requests for information;
  - f. Seek guidance from the Ohio Attorney General whenever a question arises about the application of the Public Records or Open Meeting Acts or about the appropriateness of a request for information; and,
  - g. Clearly and concisely state the reason or reasons why a request for information has been denied.

## **H. FAILURE TO RESPOND TO A PUBLIC RECORDS REQUEST**

The County recognizes the legal and non-legal consequences of failing to properly respond to a public records request. In addition to the distrust in government that failing to comply may cause, the County's failure to comply with a request may result in a court order ordering the County to comply with the law and may be required to pay the requester attorney's fees and damages.