

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, EX REL.
ROBERT W. RUSSELL

Relator-Appellant,

v.

STEPHEN W. THORNTON,
WOOSTER CHIEF OF POLICE

Respondent-Appellee.

:
: Case No. GEN-2006-0526
:
:
: On Appeal from the Wayne
: County Court of Appeals, Ninth
: Appellate District
:
:
: Court of Appeals
: Case No. 05-CA-0082

AMICUS CURIAE MEMORANDUM IN SUPPORT OF MOTION FOR
RECONSIDERATION OF APPELLANT ROBERT W. RUSSELL

S. Ct. Prac. Rule XI, Section 2(B)

Robert W. Russell, 453-744
P.O. Box 788
Mansfield, Ohio 44901-0788

Appellant, Pro Se

Richard R. Benson, Jr. (0021968)
Director of Law
CITY OF WOOSTER LAW DEPARTMENT
538 N. Market Street
Wooster, Ohio 44691
Tel: (330) 263-5248
Fax: (330) 263-5247
Email: dbenson@woosteroh.com

Counsel for Appellee, Stephen W. Thornton

Frank C Brown, Jr.
1150 North Main Street
P.O. Box 788; A439-439
Mansfield, OH 44901-0788

Amicus Curiae, Pro se for
Robert W. Russell.
Relator-Appellant

RECEIVED

DEC 11 2006

MARCIA J MENGEL, CLERK
SUPREME COURT OF OHIO

FILED

DEC 11 2006

MARCIA J MENGEL, CLERK
SUPREME COURT OF OHIO

MEMORANDUM IN SUPPORT

It has been well established, and a settled issue in this state that;

"In construing a statute, a court must implement the intent of the legislature by giving effect to the words used, not by deleting or adding words." State v. Thomas, 106 Ohio St.3d 133, 2005-Ohio-4106, 832 N.E.2d 1190, ¶ 13, citing State v. Moody, 104 Ohio St.3d 244, 2004-Ohio-6395, 819 N.E.2d 268, ¶ 15 (Underline added)

The key word of the above citation, is that being one of "intent".

intent n. 1. That which is intended; purpose. 2. The state of mind operative at the time of the action. 3. Having the mind fastened upon some purpose. (American Heritage Dictionary, 2nd College Ed.(1985), pg. 668

purpose n. 1. The object toward which one strives or for which something exist; goal; aim;. 2. A result or effect that is intended or desired; intention. 3. Determination; resolution. 4. The matter at hand; point at issue. To intend or resolve to perform or accomplish. Id. pg. 1006.

Furthermore, Black's Law Dictionary also defines the aforestated words as:

Intent. Design, resolve, or determination with which person acts. A state of mind in which a person seeks to accomplish a given result through a course of action. A mental attitude which can seldom be proved by direct evidence, but must ordinarily be proved by circumstances from which it may be inferred. (Black's Law Dict., 6th Ed.(1998), pg. 810

Purpose. That which one sets before him to accomplish or attain; an end, intention, or aim, object, plan, project. Id. pg. 1236.

With the aforestated definitions being of grammatical importance, it can effectively be argued that in construing a statute, a court must, not only, implement the intent of the legislature by giving effect to the words used, but also must implement the purpose of the statute as enacted in toto.

A thorough reading of Amended Substitute Senate Bill 78 clearly states:

To amend section 149.43 of the Revised Code to generally grant members of the public the option of choosing the medium in which they will receive copies of public records, to require a public office to transmit copies of a public record through the United States mail if so requested, and to generally exclude peace officer residential and familial information from the scope of the Open Records Law. (Emphasis added) Am. Sub. SB 78 (effective December 16, 1999)

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

(1) "Public record" means any record that is kept by any public office, including, but not limited to, state, county, city, village, township, and school district units, except that "public record" does not mean any of the following:

* * *

(g) Trial preparation records;

(h) Confidential law enforcement investigatory records;

* * *

(2) "Confidential law enforcement investigatory record" means any record that pertains to a law enforcement matter of a criminal, quasicriminal, 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: (Emphasis added)

The Amicus Curiae references exceptions (a)-(d) as if fully rewritten herein,

* * *

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

The Amicus Curiae references the remainder of R.C. 149.43 as if fully rewritten herein. (See copy appended herewith as Exhibit #1)

The General Assembly has defined, with specificity, what constitutes, and is "any record concerning a criminal investigation or prosecution" as used in the provisions of R.C. 149.43(B)(4), and as such the definitive language is not broad and encompassing as used in the aforesated definitive context, and clearly does not include 'routine Ohio Uniform Offense and Incident Reports' that do not fall under, or into, the statutory enumerated exceptions or exemptions stated in R.C. 149.43(A)(2)(a-d) or (A)(4), and sets forth heightened requirements for inmates seeking only 'any records concerning a criminal investigation or prosecution' as defined above, and not just any "public record" as stated in this Court's decision in the case sub judice @ ¶ 14 and infra. Such a statement has connotations of future violations of a constitutional magnitude, and clashes with twenty-five years of precedent as set by this very Court.

Furthermore, this Court in State ex rel. Steckman v. Jackson (1994) 70 Ohio St.3d 420, 639 N.E.2d 83 performed an astute, extensive, definitive analysis and dissertation of R.C. 149.43(A)(2)(a-d), and (A)(4) and cited the def-

initions as used in State ex rel. Beacon Journal Publishing Co. v. Univ. of Akron (1980) 64 Ohio St.2d 392, 18 O.O.3d 534, 415 N.E.2d 310, and State ex rel. Natl. Broadcasting Co. v. Cleveland (1988) 38 Ohio St.3d 79, 526 N.E.2d 786 for what specifically constitutes those as defined above, and what constitutes "work product", which did not include 'routine offense and incident reports.

In that very lengthy, and definitive dissertation this Court also stated:

"Defendant in a criminal case who has exhausted direct appeals of his conviction may not avail himself of public records statute to support petition for postconviction relief; * * * " Id. ¶ 10 of the syllabus.

as they were records that were exempt and to which he was otherwise not entitled as they were defined "a record concerning a criminal investigation."

That decision has now been misinterpreted and incorrectly applied by the lower courts to mean 'A defendant may not use any public records to support a postconviction petition' which is not consistent with this Courts opinion. This is just but one example of the manner in which a decision is misinterpreted.

Furthermore, the current ruling is in conflict and clashes with this Court's ruling in State ex re. Saveyega v. Reis (2000) 88 Ohio St.3d 458, 727 N.E.2d 910 in which it stated and opined in regards to 'a record which is exempt':

[3] "Finally, to the extent that Saveyega requested records that are exempt from disclosure * * * ." Id. ¶ 3 of the opinion.

This ruling can only be construed as a judicial acknowledgement of the statutory, and definitive difference in the status of the records, and clearly excludes those records to which the exceptions or exemptions are manifestly inapplicable. The presiding Justice who wrote the instant opinion stated:

"Although the request was not phrased in the way he wanted, it is clear that Russell intended to specify that he requested only offense and incident reports, and not records relating to a criminal investigation or prosecution." State ex re. Russell v. Thornton Chief of Police, 111 Ohio St.3d 409, 2006-Ohio-5858, ¶ 4 of the opinion.

Again, this statement can only be construed as a judicial acknowledgement

of the statutory, definitive difference in the status of the records as those of one being one of 'routine offense and incident reports', and records that are relating to a criminal investigation or prosecution and the distinctive definition between the two, and is quite a conclusive inference from the actual context of the request letter as it was written.

Furthermore, this Court in it's decision in the case at bar cited a ruling from the 6th District which has the adverse potential to deny constitutional rights and to be in direct confliction with the United States Supreme Court rulings regarding certain and specific 'public records.' See State e x rel. Rittner v. Barber, Fulton App. No. F-05-020, 2006-Ohio- 592, ¶ 14. The Rittner, supra, ruling is in direct conflict with R.C. 149.43(B)(4) and many other Ohio statutes which encompass and govern "public records" and all that is entailed in said statutes as defined by R.C. 149.011 et seq.

The Amicus Curiae references R.C. 149.011 as if fully rewritten herein.

By the ambiguous wording used in the Rittner, supra, opinion, and as used by this Court in the case sub judice, the courts have now placed the statutory 'heighted requirements' upon 'a person incarcerated pursuant to a criminal conviction' to obtain copies of any public record, and not just those which are 'concerning a criminal investigation or prosecution.' These rulings will have dire implications, consequences, and ramifications if left to stand and upheld by this Court and not corrected.

This goes against the statutory provisions as enacted in R.C. 149.43, and all the definitions used in R.C. 149.011(A)(B)(D) & (E),(Exh. #2) and has potential to clash with Criminal Rule 16 and the constitutional rights entailed. This could now mean that if 'a person incarcerated pursuant to a criminal conviction' wants to obtain a copy of their trial transcripts to pursue

a direct appeal or other appellate avenues, and have not been afforded a copy, because the trial court failed to comply with Crim.R. 32, which is a common place occurrence in this state when a defendant enters a plea of guilty now, that they must first 'obtain a judicial finding of a justiciable claim' to procure them. Under the 'broad and encompassing ruling' as made by this court in the instant case, this could also include a copy of a docket sheet, a motion filed, a judgment/journal entry, or a appellate court decision. They are all a 'record concerning a criminal prosecution' as by the 'broad and encompassing' ruling and decision as rendered by this Court.

This untenable, asinine holding in Rittner, supra, and as used by this Court in the instant case could effectively trickle down to deny an 'inmate' who has requested a copy of a birth certificate, a child's grade card, a Senate Bill, a FBI report, a marriage license, and a oath of office. These rulings have the potential to have dire consequences and adverse ramifications. It is very disconcerting the way, and the amount of times the 'broad and encompassing' generic phrase of 'public records' is used in these decisions.

Furthermore, the language of the statute as used by this Court is 'broad and encompassing', but not as enacted. It is however, ambiguous in nature and content, and is unconstitutional as used in the aforestated decisions of Rittner, supra and Russell, supra. It does not provide for or under which format, forum, or medium the 'judicial finding of a justiciable claim' shall or must be obtained. If the case is in appellate review, how does the 'judge who imposed the sentence' have jurisdiction to make a 'finding of a justiciable claim'? Ergo the ambiguity and unconstitutional wording of the statute.

The Amicus Curiae requested this Honorable Court to perform a definitive dissertation of what specifically constitutes "any public record concerning

a criminal investigation or prosecution." It failed to do such, and therefore the statute as applied by the court in Rittner, supra, and this Court is unconstitutional as it denies access to records provided by the United States Constitution, and the Ohio Constitution, and should be so declared by this most Honorable Supreme Court for the State of Ohio. These rulings as worded, and will be used by the 'custodians of the records' would, and will violate the 5th, 6th, 14th, and 20th Amendments of the United States Constitution, and Article I, Section 2, 10, and 16 of the Ohio Constitution.

The status and definition of the 'public record' cannot subjectively change pursuant to who is making the request. The status of the requestor is dispositive of a request of a record which has been 'cloaked' as public. It is a preposterous ideology that a journalist, family member, or friend can acquire a copy of a record and send it to the inmate, but the inmate themselves may not procure it just because they are incarcerated.

Furthermore, when a judge, who is either elected or appointed to the court, takes an oath of office, it specifically states that:

I, * * * , do solemnly swear that I will support the Constitution of the United States of America, and the State of Ohio, and that, as Judge of the * * * , I will administer justice without respect to persons and faithfully and impartially discharge and perform all duties incumbent upon me as such Judge, according to the best of my ability and understanding.

The oath as written is very succinct and straightforward however, once a judge dons the robe and is placed behind the bench, it seems the oath is then just a perfunctory ritual, and is disregarded in the rulings made. This is evidenced by the innumerable contradictory, asinine, untenable rulings, that are made in spite of the doctrine of stare decisis, and precedent, that are controlled by human nature. The id, ego, and superego cannot be removed from the equation, and thus the oath of 'impartially discharge'

is not true, as it is practically impossible to remove human emotion totally. This is evidenced by the statements, and rulings that are made by many judges in certain cases of a specific nature. The oath includes following that doctrine, no matter what the personal feelings of the judge, as it is supported by both the superior court and the United States and Ohio Constitutions. If this doctrine were followed with more strict adherence, appeals would diminish in a unprecedented capacity that would free up the courts significantly.

It is a travesty that a system of justice that was enacted for the protection of a criminal defendant, as a citizen of this country in a criminal proceeding, has been excepted, exempted, provisioned, and amended away to the current state of jurisprudence that currently exist in this country, which is evidenced by the 45,000 plus inmates incarcerated in this state to the monetary amount of 1.6 billion dollars plus a year. There are more people incarcerated in this state than the countries of England, Germany and France. It is imperceptive how a educated, learned, seasoned judge can read a judicial ruling or statute in it's plain language, and then invert it's meaning, and yet a layman, pro se litigant can interpret it's plain meaning as written.

"The Court construes language in it's context and in light of the terms surrounding it." Smith v. U.S. 113 S.Ct. 2050, 2054. The use of the word "any" as used in R.C. 149.43(B)(4) refers specifically to "records concerning a criminal investigation or prosecution" and is not 'broad and encompassing.'

Furthermore, it is,was,not the General Assembly's clearly evidenced public policy decision to totally restrict a convicted inmate's unlimited access to all public records in order to conserve law enforcement resources, it was to prevent the release of peace officer residential and familial information,as is stated on the front of Am.Sub. Senate Bill Number 78,from the scope of the Open Records Law, and they failed to make the bill specific.

The intent and purpose, for the most part, of the statutes are written in plain English. It is, and has been the 'reinterpretation' of these statutes, and rules, and by the rulings that has clearly restricted a criminal defendant or a person incarcerated, who has been adversely subjected to discovery violations by the state, to effectively, and constitutionally procure information that may be exculpatory in nature and was purposely concealed by the state. By the time a person overcomes the barriers placed before him to acquire this information, many times it is too late to proffer it for a fair adjudication. This is done purposefully, with spite, and malice consistently in this state by overzealous prosecutors who must put another notch on their resume'. Criminal Rule 16(B)(1)(c) & (f) are no more than a "Rule in theory" in the State of Ohio.

"Nothing can destroy a government more quickly than a failure to observe it's own laws, or worse, it's disregard of the character of it's own existence." Mapp v. Ohio 81 S.Ct. 1684, 1694 (1961)

The aforestated United States Supreme Court citation speaks volumes.

CONCLUSION

WHEREFORE, based upon the aforestated facts, contentions, and case law citations, this most Honorable Court should find that it was premature in it's opinion, that this ruling will have dire, very detrimental, and very 'broad and encompassing' subsequent ramifications of a constitutional magnitude, that if left to stand, it will evolve into a virus that will penetrate the skin of the body of the framework of our justice system, if left untreated it will infect the flesh of the legislature and will fester and mutate, spewing forth voluminous, contagious, and unconstitutional decisions and rulings, and it will enter into the very heart of the Constitution and become a malignant, terminal cancer that cannot be cured once it has spread unchecked, and will become a plague that will be the demise of Open Records Law in Ohio.

THEREFORE, based upon all the aforesated facts, contentions, and case law citations, the Amicus Curiae prays this most Honorable Supreme Court of the great State of Ohio reconsiders it's untenable, asinine, unprecedented, and dangerous decision as it has the adverse potential to have dire implications, consequences, and ramifications of constitutional magnitude if left to stand and will adversely affect the ability for citizens of this state to procure records which have been deemed as a 'public record' by the citizens of this state who have elected the General Assembly and ratified these statutes into codified laws for the good of all citizens involved, as well as the precedent decisions of this Honorable Court in regard to said records, and reverse the judgment of the court of appeals and remand the cause for further proceedings and any other relief it deems necessary and proper.

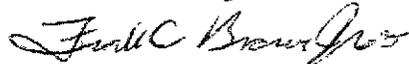
Respectfully submitted,



Frank C Brown, Jr.
1150 North Main Street
Building 4-D, Suite 257
P.O. Box 788; A439-439
Mansfield, OH 44901-0788
Amicus Curiae, Pro se for
Robert W. Russell-Appellant

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was sent by regular U.S. Mail or hand delivered to the parties at their respective addresses as stated above on this 6th day of December, 2006.



Frank C Brown, Jr.
Amicus Curiae
Pro se

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Robert W. Shapiro

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the
31st day of March, A. D. 2005

J. Kenneth Blackwell

Secretary of State.

File No. 146

Effective Date June 30, 2005

EXHIBIT # 1

AN ACT

To amend section 149.43 of the Revised Code to generally grant members of the public the option of choosing the medium in which they will receive copies of public records, to require a public office to transmit copies of a public record through the United States mail if so requested, and to generally exclude peace officer residential and familial information from the scope of the Open Records Law.

Be it enacted by the General Assembly of the State of Ohio:

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

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

(1) "Public record" means any record that is kept by any public office, including, but not limited to, state, county, city, village, township, and school district units, except that "public record" does not mean any of the following:

- (a) Medical records;
- (b) Records pertaining to probation and parole proceedings;
- (c) Records pertaining to actions under section 2151.85 and division (C) of section 2919.121 of the Revised Code and to appeals of actions arising under those sections;
- (d) Records pertaining to adoption proceedings, including the contents of an adoption file maintained by the department of health under section 3705.12 of the Revised Code;
- (e) Information in a record contained in the putative father registry established by section 3107.062 of the Revised Code, regardless of whether the information is held by the department of human services or, pursuant to section 5101.313 of the Revised Code, the division of child support in the department or a child support enforcement agency;
- (f) Records listed in division (A) of section 3107.42 of the Revised Code or specified in division (A) of section 3107.52 of the Revised Code;
- (g) Trial preparation records;
- (h) Confidential law enforcement investigatory records;

(i) Records containing information that is confidential under section 2317.023 or 4112.05 of the Revised Code;

(j) DNA records stored in the DNA database pursuant to section 109.573 of the Revised Code;

(k) Inmate records released by the department of rehabilitation and correction to the department of youth services or a court of record pursuant to division (E) of section 5120.21 of the Revised Code;

(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;

(m) Intellectual property records;

(n) Donor profile records;

(o) Records maintained by the department of human services pursuant to section 5101.312 of the Revised Code;

(p) PEACE OFFICER RESIDENTIAL AND FAMILIAL INFORMATION;

(q) Records the release of which is prohibited by state or federal law.

(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:

(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;

(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;

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

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

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

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

(5) "Intellectual property record" means a record, other than a financial or administrative record, that is produced or collected by or for faculty or staff of a state institution of higher learning in the conduct of or as a result of study or research on an educational, commercial, scientific, artistic, technical, or scholarly issue, regardless of whether the study or research was sponsored by the institution alone or in conjunction with

governmental body or private concern, and that has not been publicly released, published, or patented.

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

(7) "PEACE OFFICER RESIDENTIAL AND FAMILIAL INFORMATION" MEANS INFORMATION THAT DISCLOSES ANY OF THE FOLLOWING:

(a) THE ADDRESS OF THE ACTUAL PERSONAL RESIDENCE OF A PEACE OFFICER, EXCEPT FOR THE STATE OR POLITICAL SUBDIVISION IN WHICH THE PEACE OFFICER RESIDES;

(b) INFORMATION COMPILED FROM REFERRAL TO OR PARTICIPATION IN AN EMPLOYEE ASSISTANCE PROGRAM;

(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;

(d) 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;

(e) 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;

(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, CREDIT CARD NUMBER, OR THE EMERGENCY TELEPHONE NUMBER OF THE SPOUSE, A FORMER SPOUSE, OR ANY MEMBER OF A PEACE OFFICER.

AS USED IN DIVISIONS (A)(7) AND (B)(5) OF THIS SECTION, "PEACE OFFICER" HAS THE SAME MEANING AS IN SECTION 109.71 OF THE REVISED CODE, EXCEPT THAT "PEACE OFFICER" 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.

(B) ALL (1) SUBJECT TO DIVISION (B)(4) OF THIS SECTION, public records shall be promptly prepared and made available for inspection to any person at all reasonable times during regular business hours. Upon request, a PUBLIC OFFICE OR person responsible for public

records shall make copies available at cost, within a reasonable period of time. In order to facilitate broader access to public records, governmental units PUBLIC OFFICES shall maintain public records in a manner that they can be made available for inspection in accordance with this division.

(2) IF ANY PERSON CHOOSES TO OBTAIN A COPY OF A PUBLIC RECORD IN ACCORDANCE WITH DIVISION (B)(1) OF THIS SECTION, THE PUBLIC OFFICE OR 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.

(3) UPON A REQUEST MADE IN ACCORDANCE WITH DIVISION (B)(1) 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 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 AND OTHER SUPPLIES USED IN THE MAILING.

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 PURSUANT TO THIS DIVISION. A PUBLIC OFFICE THAT ADOPTS A POLICY AND PROCEDURES UNDER THIS DIVISION SHALL COMPLY WITH THEM IN PERFORMING ITS DUTIES UNDER THIS DIVISION.

IN ANY POLICY AND PROCEDURES ADOPTED UNDER THIS DIVISION, A PUBLIC 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. FOR PURPOSES OF THIS DIVISION, "COMMERCIAL" SHALL RE-

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.

(4) A PUBLIC OFFICE OR PERSON RESPONSIBLE FOR PUBLIC RECORDS 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 OR PROSECUTION IF THE SUBJECT OF THE INVESTIGATION OR PROSECUTION WERE AN ADULT, UNLESS THE REQUEST TO INSPECT OR TO OBTAIN A COPY OF THE RECORD IS FOR THE PURPOSE OF ACQUIRING INFORMATION THAT IS SUBJECT TO RELEASE AS A PUBLIC RECORD UNDER THIS SECTION AND 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 JUSTIFIABLE CLAIM OF THE PERSON.

(5) UPON WRITTEN REQUEST MADE AND SIGNED BY A JOURNALIST ON OR AFTER THE EFFECTIVE DATE OF THIS AMENDMENT, A PUBLIC OFFICE, OR PERSON RESPONSIBLE FOR PUBLIC RECORDS, HAVING CUSTODY OF THE RECORDS OF THE AGENCY EMPLOYING A SPECIFIED PEACE OFFICER SHALL DISCLOSE TO THE JOURNALIST THE ADDRESS OF THE ACTUAL PERSONAL RESIDENCE OF THE PEACE OFFICER AND, IF THE PEACE OFFICER'S SPOUSE, FORMER SPOUSE, OR CHILD IS EMPLOYED BY A PUBLIC OFFICE, THE NAME AND ADDRESS OF THE EMPLOYER OF THE PEACE OFFICER'S SPOUSE, FORMER SPOUSE, OR CHILD. THE REQUEST SHALL INCLUDE THE JOURNALIST'S NAME AND TITLE AND THE NAME AND ADDRESS OF THE JOURNALIST'S EMPLOYER AND SHALL STATE THAT DISCLOSURE OF THE INFORMATION SOUGHT WOULD BE IN THE PUBLIC INTEREST.

AS USED IN DIVISION (B)(5) OF THIS SECTION, "JOURNALIST" MEANS A PERSON ENGAGED IN, CONNECTED WITH, OR EMPLOYED BY ANY NEWS MEDIUM, INCLUDING A NEWSPAPER, MAGAZINE, PRESS ASSOCIATION, NEWS AGENCY, OR WIRE SERVICE, A RADIO OR TELEVISION STATION, OR A SIMILAR MEDIUM, FOR THE PURPOSE OF GATHERING, PROCESSING, TRANSMITTING, COMPILING, EDITING, OR DISSEMINATING INFORMATION FOR THE GENERAL PUBLIC.

(C) If a person allegedly is aggrieved by the failure of a governmental PUBLIC OFFICE to promptly prepare a public record and to make it available to the person for inspection in accordance with division (B) of this section, or if a person who has requested a copy of a public record allegedly

is aggrieved by the failure of a PUBLIC OFFICE OR THE person responsible for the public record to make a copy available to the person allegedly aggrieved in accordance with division (B) of this section, the person allegedly aggrieved may commence a mandamus action to obtain a judgment that orders the governmental unit PUBLIC OFFICE or the person responsible for the public record to comply with division (B) of this section and that awards reasonable attorney's fees to the person that instituted the mandamus action. The mandamus action may be commenced in the court of common pleas of the county in which division (B) of this section allegedly was not complied with, in the supreme court pursuant to its original jurisdiction under Section 2 of Article IV, Ohio Constitution, or in the court of appeals for the appellate district in which division (B) of this section allegedly was not complied with pursuant to its original jurisdiction under Section 3 of Article IV, Ohio Constitution.

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

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

(2) As used in ~~division~~ DIVISIONS (B)(3) AND (E)(1) of this section:

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

(b) "Bulk commercial special extraction request" means a request for copies of a record for information in a format other than the format already available, or information that cannot be extracted without examination of all items in a records series, class of records, or data base by a person who intends to use or forward the copies for surveys, marketing, solicitation, or resale for commercial purposes. "Bulk commercial special extraction request" does not include a request by a person who gives assurance to the bureau that the person making the request does not intend to use or forward the requested copies for surveys, marketing, solicitation, or resale for commercial purposes.

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

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

(3) For purposes of divisions (E)(1) and (2) of this section, "commercial surveys, marketing, solicitation, or resale" shall be narrowly con-

strued 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.

SECTION 2. That existing section 149.43 of the Revised Code is hereby repealed.

SECTION 3. Division (B) of section 149.43 of the Revised Code amended by this act, shall apply only to requests for the inspection, copying of public records or releases of information made on or after the effective date of that section.

The section numbering of law of a general and permanent nature is hereby amended in conformity with the Revised Code.

Robert M. Shapiro

Director, Legislative Service Commission.

John Davidson

Speaker of the House of Representatives

Richard H. Jennis
President of the Senate

Enacted in the office of the Secretary of State at Columbus, Ohio, on the day of September, A. D. 1999.

Glenn R. Beckner

Secretary of State.

99

Effective Date December 16, 1999

Passed June 29, 1999

Approved Sept. 15, 1999

Bob Taft
Governor

§ 149.01.1] § 149.011 Definitions.

As used in this chapter:

(A) "Public office" includes any state agency, public institution, political subdivision, or other organized body, office, agency, institution, or entity established by the laws of this state for the exercise of any function of government.

(B) "State agency" includes every department, bureau, board, commission, office, or other organized body established by the constitution and laws of this state for the exercise of any function of state government, including any state-supported institution of higher education, the general assembly, any legislative agency, any court or judicial agency, or any political subdivision or agency of a political subdivision.

(C) "Public money" includes all money received or collected by or due a public official, whether in accordance with or under authority of any law, ordinance, resolution, or order, under color of office, or otherwise. It also includes any money collected by any individual on behalf of a public office or as a purported representative or agent of the public office.

(D) "Public official" includes all officers, employees, or duly authorized representatives or agents of a public office.

(E) "Color of office" includes any act purported or alleged to be done under any law, ordinance, resolution, order, or other pretension to official right, power, or authority.

(F) "Archive" includes any public record that is transferred to the state archives or other designated archival institutions because of the historical information contained on it.

(G) "Records" includes any document, device, or item, regardless of physical form or characteristic, including an electronic record as defined in section 1306.01 of the Revised Code, created or received by or coming under the jurisdiction of any public office of the state or its political subdivisions, which serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office.

HISTORY: 141 v H 238. Eff 7-1-85; 150 v H 95, § 1, eff. 9-26-03.

The effective date is set by section 179 of H.B. 95 (150 v —).

Effect of amendments

H.B. 95, Acts 2003, effective September 26, 2003, inserted "including an electronic record as defined in section 1306.01 of the Revised Code" in (G); and made minor stylistic changes.

CASE NOTES AND OAG

INDEX

- Court records
Hospitals
Port authority escrow fund records
State employee addresses

Court records

Pleadings in a case are public records subject to disclosure

unless a statutory exception applies: State ex rel. Miami Valley Broad. Corp. v. Davis, 156 Ohio App. 3d 98, 814 N.E. 2d 88 (2004).

Hospitals

Parma Hospital is not a public institution subject to the public records law: State ex rel. Stys v. Parma Community Gen. Hosp., 93 Ohio St. 3d 438, 755 N.E.2d 874 (2001).

Port authority escrow fund records

Summary judgment was granted where mandamus could not be used to get information on spending from a proper, federally validated, port authority escrow account subject to the jurisdiction of the Surface Transportation Board; however, the corporation was given access to public records available under Ohio law though attorney fees were denied. State ex rel. R.R. Ventures v. Columbiana County Port, 2004 Ohio App. LEXIS 342 (2004).

State employee addresses

State employee home addresses are generally not "records" under RC § 149.011(G) and are thus not subject to disclosure under RC § 149.43: State ex rel. Dispatch Printing Co. v. Johnson, 106 Ohio St. 3d 160, 833 N.E.2d 274 (2005).

§ 149.07 Distribution of journals to members of general assembly.

One bound copy of each of the final journals and appendixes shall be made available to each member of the general assembly.

HISTORY: RS §§ 66, 68; S&S 431; S&C 827, 828; 72 v 179; §§ 10, 12; 77 v 50; 78 v 63, 220, 221; 80 v 104, 107; 82 v 12; 88 v 501; 95 v 289; GC § 2276; 103 v 176; 106 v 508; 123 v 376; Bureau of Code Revision, 10-1-53; 147 v H 649 (Eff 3-9-99); 149 v H 405. Eff 12-13-2001.

§ 149.09 Distribution of pamphlet laws.

(A) Except as otherwise provided in division (B) of this section, the secretary of state shall distribute the pamphlet laws in the following manner: one copy of each pamphlet law shall be forwarded to each county law library, one copy of each pamphlet law shall be forwarded to each county auditor, and one hundred copies of each pamphlet law shall be forwarded to the state library board, which shall forward to each library that receives publications under section 149.12 of the Revised Code one copy of each pamphlet law received. The secretary of state shall distribute any remaining copies of each pamphlet law on the request of interested persons.

(B)(1) If the secretary of state chooses to distribute the pamphlet laws in an electronic format instead of distributing copies as provided in division (A) of this section in a paper format, the secretary of state shall notify the clerk of the house of representatives and the clerk of the senate that the printing of paper copies for purposes of this section is no longer necessary and that the secretary of state intends to produce and distribute the pamphlet laws in an electronic format. The secretary of state shall be responsible for paying for the cost of producing and distributing the pamphlet laws in an electronic format.

(2) The secretary of state shall establish, by rule, a schedule for the distribution of pamphlet laws in an

EXHIBIT #2

elect
tors,
(3)
pamj
(4)
provi
sectic
HIS
141 v
Eff 3-
Ann
S&S 4
110 v
10-1-5
9-22-7

[§
tion
(A)
this s
lish,
paper
sessio
contai
secret
compi
tribute
Code
certific
are tr
resolut

The
tions c
(1)
(2)
library.
(3)
to pub
(4)
secreta
actual
(B)
secreta
either
volume
session
contain
The se
each v
distribu
Code s
certific
the orig
secreta
The
nently
followin
(1) F
house o
(2) F
senate.