

ORIGINAL

# In the Supreme Court of Ohio

STATE, *ex rel.* THE CINCINNATI :  
ENQUIRER, a Division of Gannett :  
Satellite Information Network, Inc. :  
312 Elm Street :  
Cincinnati, Ohio 45202 :

Case No. 13-0300

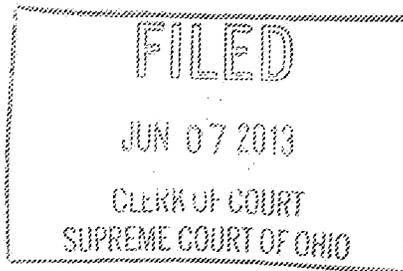
Relator,

Original Action in Mandamus and  
Prohibition

vs.

HONORABLE ROBERT H. LYONS,  
Butler County  
Area I Court  
118 High St.  
Oxford, Ohio 45056

Respondent.



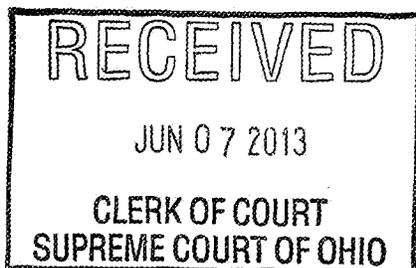
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## MERIT BRIEF OF RELATOR IN SUPPORT OF COMPLAINT FOR WRIT OF MANDAMUS AND PROHIBITION

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## STATEMENT OF FACTS

The Cincinnati Enquirer (“The Enquirer”) is a newspaper of general circulation located in Southwest, Ohio. (McLaughlin Aff. ¶ 2.) Robert H. Lyons (“Respondent” or “Judge Lyons”), has been the judge of the Butler County Area I Court in Oxford, Ohio for the past 14 years. (Judge Lyons Aff. ¶ 1.) Respondent also maintains an active law practice, through which he assists individuals with expungement applications. (Judge Lyons Dep. 7:14-8:19, Jan. 15, 2013.) Respondent’s law firm, Lyons & Lyons, operates the website SealMyRecordOhio.com. (*Id.*)

On November 14, 2012, The Enquirer filed a Complaint in Mandamus in this Court against Respondent in which The Enquirer sought access to the conviction record of a Miami University of Ohio student prosecuted for disorderly conduct. (*State ex rel. The Cincinnati Enquirer, a Division of Gannett Satellite Information Network, Inc. v. Honorable Robert H. Lyons (“Lyons P”), Sup. Ct. Case No. 2012-1924, Compl.*) In connection with that case, The Enquirer’s attorney took Respondent’s deposition on January 15, 2013.

During his deposition, Respondent testified that he used a template form of order (“Form”) to expunge the court records of defendants who pleaded guilty to minor misdemeanor charges that cited R.C. 2953.52 as the statutory authority for the expungement order. (Judge Lyons Dep. 12:18-13:6, 24:1-24:20; Greiner Aff., Ex. B at 4.) Respondent conceded during his deposition that R.C. 2953.52 did not provide him with legal authority to seal minor misdemeanor conviction records. (*Id.*) Respondent also suggested that he had used the Form to seal minor misdemeanor conviction records for “quite a while.” (*Id.*)

On January 24, 2013, Enquirer reporter Sheila McLaughlin sent a request on behalf of the The Enquirer to Respondent requesting to “review and/or copy all records of criminal proceedings sealed pursuant to O.R.C. 2953.52 following a conviction for the last five (5) years” (hereinafter “January 24 Request”). (McLaughlin Aff. ¶ 5, Ex. A.) By letter dated January 28,

2013 (“Respondent’s January 28 Letter”), Respondent denied the January 24 Request on the ground that R.C. 149.43(A)(1)(v) and “R.C. 2953.22(D) [sic]” prohibited disclosure. (McLaughlin Aff. ¶ 6, Ex. B.) Respondent also cited this Court’s decision in *State ex rel. Cincinnati Enquirer v. Winkler*, 101 Ohio St.3d 382, 2004-Ohio-1581, for the proposition that “[o]nce court records [are] sealed under R.C. 2953.52, they cease[] to be public records. (McLaughlin Aff. ¶ 6, Ex. B.)

Upon receipt of Respondent’s January 28 Letter, The Enquirer sent a letter to Butler County Prosecuting Attorney Michael T. Gmoser (“Gmoser”), whose office represents Respondent in *Lyons I*. The letter requested production of all expungement order entries issued by Judge Lyons for which he used the Form. (Greiner Aff. ¶ 3, Ex. B.) The Enquirer also offered to accept, for the time being, entries “with ‘sealed’ information redacted” (“January 28 Request”). (*Id.*) Mr. Gmoser denied the request by letter dated February 4. (*Id.* at ¶ 4, Ex. C.)

The affidavits Respondent submits as evidence in this action purport to show that Respondent did not realize the Form cited R.C. 2953.52 when he authorized the expungements, and that the Form should have read R.C. 2953.32 in every instance. (Judge Lyons Aff. ¶ 3.) He further claims that the “clerical error” was not his, but that of an unidentified “employee of the Clerk’s office.”

Respondent also attests that “[b]ased on [his] interpretation of Ohio law, a judge has the authority to seal the record of a minor misdemeanor disorderly conduct conviction upon the conclusion of the case once an eligible offender has filed an application to seal the record.” (*Id.*) Evidence submitted by Respondent reinforces this point, showing that it is the custom of the Butler County Area I Court to seal minor misdemeanor records “upon disposition of the case.” (Staton Aff. ¶ 4.) Respondent likewise testified at his deposition that he does not require minor

misdemeanor offenders to wait one year before applying to seal a minor misdemeanor record under R.C. 2953.32. (Judge Lyons Dep. 25:22-26:20.)

Respondent attests that he is unable to correct the error for lack of “authority to open sealed conviction records to determine which of them were sealed with an order that referred to the wrong statute.” (Judge Lyons Aff. ¶ 4.) The Butler County Area Court Clerk correspondingly claims that “[a] sealed record can only be unsealed upon an order from one of the Area Court judges after a ruling on a motion to unseal the record.” (Bolser Aff. ¶ 6.) Thus, The Enquirer has been unable to obtain the records requested in its January 24 Letter.

### ARGUMENT

**Proposition of Law No. I:**  
**Mandamus is the appropriate remedy for a violation of Ohio**  
**Superintendence Rules 44 through 47 and R.C. 149.43(B).**

The Enquirer petitions this Court for a writ of mandamus compelling Respondent to produce the court records associated with all minor misdemeanor records sealed by Respondent using the Form for the last five years. The Enquirer likewise seeks a writ of prohibition prohibiting Respondent from enforcing those same orders so as to preclude public access to the documents.

The Enquirer’s Request seeks conviction records dating back to January 2008. Superintendence Rules 44 through 47, as amended, apply to case documents in actions commenced in county courts after July 1, 2009. *See* Sup.R. 47(A)(1); Sup.R. 99(KK); Sup.R. 1(A); and Sup.R. 44. For those documents generated prior to July 1, 2009, Ohio’s Public Records statute, R.C. 149.43 applies.

Under R.C. 149.43, a person “aggrieved by the failure of a public office . . . to promptly prepare a public record and to make it available to the [requestor] for inspection” may commence a mandamus action in this Court. *See State ex rel. Mahajan v. State Med. Bd. of Ohio*, 127 Ohio

St. 3d 497, 501, 2010-Ohio-5995, 940 N.E.2d 1280 (“Mandamus is the appropriate remedy to compel compliance with R.C. 149.43, Ohio’s Public Records Act.” (internal quotations omitted)).

Similarly, Sup.R. 47(B) expressly authorizes a person “aggrieved” by a court or clerk of court’s failure to comply with the Superintendence Rules to bring an action in mandamus under Chapter 2731 of the Ohio Revised Code.

Therefore, to be entitled to relief in mandamus here, The Enquirer need only demonstrate that Respondent failed to comply with either R.C. 149.43(B), or Superintendence Rules 44 through 47, and that it is “aggrieved” by Respondent’s noncompliance. *See State ex rel. Vindicator Printing Co. v. Wolff*, 132 Ohio St. 3d 481, 2012-Ohio-3328, 974 N.E.2d 89, ¶¶ 21-40.

**Proposition of Law No. II:**

**Prohibition is an appropriate remedy to prevent the enforcement of an unlawful expungement order preventing the public from accessing minor misdemeanor records.**

In addition to seeking relief in mandamus, The Enquirer seeks a writ of prohibition to prevent Respondent from enforcing the orders sealing minor misdemeanor records using the Form. Prohibition is an appropriate remedy “to prevent enforcement of an order improperly restricting the access of press and public to court proceedings.” *In re T.R.* (1990), 52 Ohio St.3d 6, 11, 556 N.E.2d 429. A writ of prohibition is also appropriate to prevent the “unlawful usurpation of jurisdiction.” *State ex rel. Moss v. Clair* (1947), 148 Ohio St. 642, 646, 76 N.E.2d 883. To be entitled to a writ of prohibition, a relator must prove “(1) that the court against whom the writ is sought is exercising or about to exercise judicial power, (2) that the exercise of power is unauthorized by law, and (3) that denying the writ will result in injury for which no other

adequate remedy exists in the ordinary course of law.” *State ex rel. State Edison Co. v. Parrott* (1995), 73 Ohio St.3d 705, 707, 654 N.E.2d 106.

Here, Respondent’s expungement orders unlawfully restrict the public’s access to court records. The unlawful orders likewise preclude the Butler County Area Court Clerk’s office from complying with the law, as Ms. Bolser herself attests in her affidavit. (Bolser Aff. ¶ 6.) Thus, because Respondent’s expungement orders are unlawful, and the orders continue to impede access to the records, a writ of prohibition precluding future enforcement of those orders is appropriate.

**Proposition of Law No. III:**

**The Enquirer has a clear right to access, and Respondent has a clear duty to produce, the conviction records requested from Respondent under both R.C. 149.43 and Sup.R. 45(B) because Respondent’s expungement orders were, and remain, unlawful.**

Ohio Superintendence Rules 44 through 47 “provide for public access to court records” for actions commenced in county courts after July 1, 2009. *Vindicator*, 132 Ohio St.3d at ¶ 23; Sup.R. 1(A); Sup.R. 44. For court records generated in cases commenced prior to July 1, 2009, R.C. 149.43 provides access. *See, e.g. State ex rel. Cincinnati Enquirer v. Dinkelacker*, 144 Ohio App.3d 291, 761 N.E.2d 656 (1st Dist. 2001). The Enquirer’s request seeks records that date back to 2008, and thus, the Court must address the request under both sets of rules.

The parties agree on three key legal and fact issues. First, the parties agree that depending on the date, an unsealed minor misdemeanor conviction record falls within the meaning of “court record” as defined by Sup.R. 44(B) and (C), or constitutes a “public record[]” within the meaning of R.C. 149.43. (Compl. ¶ 12 & Ans. ¶ 12.) Second, they agree that R.C. 2953.52 does not provide a court with authority to seal a minor misdemeanor conviction record. (Compl. ¶ 9 & Ans. ¶ 9.) And last, the parties agree that Respondent sealed “numerous

conviction records” with the Form citing R.C. 2953.52 as the statutory authority for expungement. (*Id.*)

On these three points alone, The Enquirer is entitled to satisfaction of its January 24 Request under Sup.R. 47 and R.C. 149.43. Respondent contends, however, that the Form’s citation of R.C. 2953.52 was a “clerical error,” and that the Form should have cited R.C. 2953.32 as authority for expunging minor misdemeanor records. Respondent also claims that he lacks authority to unseal records to correct clerical errors, and that the clerk of the Butler County Area Court can only unseal a record upon order by a Butler County Area Court judge. In other words, Respondent defends his unlawful exercise of one judicial power by claiming the absence of another.

The Court of Appeals for the Twelfth Appellate District recently rejected a similar argument in *State of Ohio ex rel. The Cincinnati Enquirer v. Sage*, 12th Dist. Case No. CA2012-06-122 (June 3, 2013). In that case, the Butler County Prosecuting Attorney argued that an order closing and sealing records in a criminal case prevented him from producing those records. *Id.* at ¶¶ 42-43. In rejecting the argument, the Twelfth District held that the sealing order did not put those records “beyond the reach of a writ of mandamus sought pursuant to R.C. 149.43(C).” It further noted that in a mandamus proceeding under R.C. 149.43, the sealing order should only be considered as “evidence that the record is one ‘the release of which is prohibited by state or federal law’ pursuant to R.C. 149.43(A)(1)(v).” *Id.* at ¶ 43.

In this case, Respondent knew that his expungement orders were facially unlawful. He therefore had every right to ignore the orders and inspect the conviction records requested by The Enquirer to comply with his duties under R.C. 149.43(C) and Sup.R. 45(B).

But even if Respondent's contention that he has no authority to correct erroneous sealing orders were legally accurate, he presents no evidence that he lawfully sealed the records in accordance with R.C. 2953.32 so that such a correction would be meaningful. Indeed, even assuming R.C. 2953.32 permits minor misdemeanor record expungements, the evidence Respondent submits shows that Respondent's practice is to allow individuals convicted of a minor misdemeanor to submit expungement applications upon disposition of a case, rather than after one year as the statute requires. Furthermore, no authority exists that permits a judge to correct a "clerical error" in an official court document by affidavit in lieu of a *nunc pro tunc* entry. The expungement orders thus remain unlawful on their face. Therefore, under either analysis, the orders sealing the records requested by The Enquirer remain unlawful, and The Enquirer has a clear legal right to inspect the records.

**1. Respondent cannot correct a "clerical mistake" by affidavit, and thus, Respondent's orders remain unlawful.**

A court of record "speaks *only* through its journal entries." *Gaskins v. Shiplevy* (1996), 76 Ohio St. 3d 380, 382, 667 N.E.2d 1194 (emphasis added). Although Crim.R. 36 permits a court to correct "[c]lerical mistakes in judgments, orders, or other parts of the record, and errors in the record arising from oversight or omission," the proper procedure for doing so is a *nunc pro tunc* entry correcting the mistake. *State v. Yeaples*, 180 Ohio App. 3d 720, 726, 2009-Ohio-184, 907 N.E.2d 333, (3d Dist. 2009) ("[a] *nunc pro tunc* entry is the procedure used to correct clerical errors in a judgment entry"). *See also State ex rel. Womack v. Marsh*, 128 Ohio St. 3d 303, 307, 2011-Ohio-229, 943 N.E.2d 1010 (citing *Yeaples* for proposition that a *nunc pro tunc* entry is the proper procedure for correcting clerical mistake).

Respondent has not corrected the "clerical error." Irrespective of whether in fact Respondent's erroneous citation of R.C. 2953.52 is a "clerical mistake" that may be corrected

under Crim.R. 36, the correction may only be made through a *nunc pro tunc* entry. The affidavit Respondent filed in this case is not an adequate substitute. This is so because one or more of the orders could conceivably become the subject of other litigation, and a future court dealing with these orders would presume their regularity. *State v. Phillips* (1995), 74 Ohio St. 3d 72, 92, 656 N.E.2d 643 (“a trial courts [sic] proceedings are presumed regular unless the record demonstrates otherwise”). Accordingly, the orders remain unlawful, and the records they seal remain “court records” and “public records” to which The Enquirer has a clear right to access, and which Respondent has a clear duty to make available under Sup.R. 45(B) and R.C. 149.43 respectively.

**2. Respondent’s orders sealing the records requested by The Enquirer were unlawful under both R.C. 2953.52 and R.C. 2953.32.**

Respondent admits that R.C. 2953.52 provides no authority to seal minor misdemeanor conviction records. Thus, on their face, Respondent’s Orders are unlawful, and Respondent concedes as much. Although this Court has never addressed the precise issue presented here, a public official cannot use an unlawful court order to shield from public scrutiny records that would otherwise fall within the definition of “public records” for purposes of R.C. 149.43, and “court records” for purposes of Sup.R. 45(B)(1). This is true whether an unlawful expungement order is “void” or “voidable.” *Compare State v. Lovelace*, 2012-Ohio-3797, 975 N.E.2d 567, ¶¶ 9-25 (1st Dist.) (holding that because a court has no jurisdiction to expunge a conviction under R.C. 2953.32 for an ineligible offender, such orders are void, not merely voidable) and *State v. Smith*, 10th Dist. No. 06AP-1059, 2007-Ohio-2873, ¶ 14 (holding that unlawful expungement order is merely voidable”). *See also State ex rel. Leadingham v. Schisler* (“*Leadingham*”), 4th Dist. No. 02CA2827, 2003-Ohio-7293 (holding that “a stranger to a judgment of expungement, who seeks access to the expunged records as unlawfully sealed public records, may collaterally attack the expungement order for lack of jurisdiction to preserve his or her (and the public’s) pre-

existing right of access to public records” (citing *Coe v. Erb* (1898), 59 Ohio St. 259, 52 N.E. 640)).

Even if the Respondent can convince the Court that R.C. 2953.32 applies to the sealing orders, they are still unlawful for at least two reasons.

First, Respondent did not wait one year before issuing the orders.

Respondent contends that the one year waiting period R.C. 2953.32 imposes does not apply to minor misdemeanors. But a strict reading of the statute does not lead to this conclusion. It results instead in the conclusion that the statute does not apply at all to minor misdemeanors.

To be eligible for expungement under R.C. 2953.32, one must be an “eligible offender.” R.C. 2953.31(A) defines “eligible offender” as

anyone who has been *convicted* of an offense in this state or any other jurisdiction and who has not more than one felony conviction, not more than two misdemeanor convictions if the convictions are not of the same offense, or not more than one felony conviction and one misdemeanor conviction in this state or any other jurisdiction.

(Emphasis added.) R.C. 2953.31(A) further provides, however, that “[f]or purposes of . . . *this division*, a conviction for a minor misdemeanor . . . is not a conviction.” (Emphasis added.) A strict interpretation of the minor misdemeanor clause would exclude minor misdemeanants from the phrase “anyone who has been *convicted* of an offense” because a minor misdemeanor is “not a conviction” for purposes of division (A). From this interpretation, it would necessarily follow that a minor misdemeanant does not qualify as an “eligible offender,” thus making R.C. 2953.32 inapplicable to an application to expunge a minor misdemeanor conviction record.

To avoid this conundrum, Respondent apparently argues that when R.C. 2953.32(A)(1) allows a person convicted of a misdemeanor to apply for an order sealing the record, that section includes persons convicted of minor misdemeanors, notwithstanding the language of R.C. 2953.31(A).

But if “convicted of a misdemeanor” includes minor misdemeanor convictions for purposes of R.C. 2953.32(A)(1), then the one year waiting period must apply as well.

Respondent cannot have it both ways. Either the orders sealing the minor misdemeanor convictions are facially invalid because minor misdemeanants are not eligible offenders under R.C. 2953.32, or the statute applies but subject to the one year waiting period. Under either scenario, the orders here are invalid under R.C. 2953.32.

Second, R.C. 2953.32(B) specifically requires that “[u]pon the filing of an application under [R.C. 2953.32], the court *shall* set a date for a hearing.” (Emphasis added). Respondent did not submit any evidence that he set a hearing in any of the cases that he sealed pursuant to R.C. 2953.32. The evidence he did submit indicates that he routinely issues sealing orders immediately upon disposition. (Staton Aff. ¶ 4.) Accordingly, even if Respondent had intended to seal the records at issue under R.C. 2953.32 as he attests, and assuming its applicability to minor misdemeanor convictions, Respondent’s own evidence (and the lack thereof) shows that his orders failed to comply with the requirements of that statute.

Therefore, because Respondent’s orders are facially unlawful, and because Respondent has submitted no evidence that they would be lawful under R.C. 2953.32, Relator has a clear right to the records requested, and Respondent has a correspondingly clear duty to produce them.

**Proposition of Law No. IV:**  
**The Court should award The Enquirer its attorney’s fees under R.C. 149.43(C).**

The Enquirer’s January 24 Request sought records covered by both R.C. 149.43 and Sup.R. 44 through 47. Although Sup.R. 44 through 47 do not permit a successful relator to recover its attorney’s fees, *see Vindicator*, 132 Ohio St. 3d 481, 2012-Ohio-3328, 974 N.E.2d 89, ¶ 43, R.C. 149.43(C) does.

The criteria for an award of attorney's fees is set forth in R.C. 149.43(C)(2). Under that subsection, "the court may award reasonable attorney's fees subject to reduction as described in division (C)(2)(c)." Division (C)(2)(c) provides that "[r]easonable 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." A court may make reduction to fees based on the reasonableness of the government's actions. Under the reasonableness test,

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

R.C. 149.43(C)(2)(c).

In addition, the party requesting attorney fees must show a public benefit, as opposed to a private benefit, resulting from the production of the records. *See State ex rel. Cincinnati Enquirer v. Heath* ("Heath"), 183 Ohio App. 3d 274, 280, 2009-Ohio-3415, 916 N.E.2d 1090 (12th Dist.) (citing *State ex rel. Cincinnati Enquirer v. Daniels*, 108 Ohio St. 3d 518, 2006-Ohio-1215, ¶ 31, 844 N.E.2d 1181). This Court has previously held that a request that would enable to a newspaper to provide "complete and accurate news reports to the public" confers a public

benefit sufficient to justify an award of fees. *State ex rel. Beacon Journal Publ'g Co. v. Maurer* (2001), 91 Ohio St. 3d 54, 58, 741 N.E.2d 511 (original formatting omitted).

With respect to R.C. 149.43(C)(2)(c)(i), a well-informed judge in Respondent's position could not have reasonably believed that refusing to turn over records sealed pursuant to an inapplicable statute was compliance with R.C. 149.43(B). Furthermore, Respondent's conduct in sealing the records in the first instance, without adherence to the statutory requirements, was a clear abuse of judicial power.

As for R.C. 149.43(C)(2)(c)(ii), a well-informed judge could not believe that withholding unlawfully sealed public records served the public policy of exempting lawfully sealed court from disclosure. This Court has previously held that expungement is a "privilege, not a right." *State v. Simon*, 87 Ohio St.3d 531, 533, 2000-Ohio-474, 721 N.E.2d 1041. As such, courts must strictly adhere to the requirements of the expungement statute in order to preserve the public's significant interest in retaining records of criminal proceedings. *See, e.g., State v. Shaffer*, 11th Dist. Case No. 2009-G-2929, 2010-Ohio-6565, ¶ 14 (holding that "because expungement is a matter of privilege rather than right, the requirements of the expungement statute must be adhered to strictly" and that "the public interest in retaining records of criminal proceedings, and making them available for legitimate purposes, outweighs any privacy interest the defendant may assert"). No well-informed judge would believe that the conduct described here serves the underlying public policy that encourages transparency in our judicial system, and which applies equally to application of R.C. 2953.32. Indeed, Respondent's conduct here is contrary to that policy.

Finally, the public benefit is clear. The Enquirer seeks to publish information concerning a county judge who—by his own admission—sealed numerous minor misdemeanor records with

an order that is facially unlawful. Although he claims that the order was the product of a “clerical error,” he submits evidence showing that his practice is to permit minor misdemeanors to be disposed of in near total secrecy. The latter practice is unlawful, and exposing the truth of the practice to the public would confer a substantial benefit upon the public. *See Heath*, 183 Ohio App. 3d at 280. An award of attorney’s fees to The Enquirer is therefore appropriate.

### CONCLUSION

For the reasons set forth above, The Enquirer respectfully requests that the Court grant its petition for a writ of mandamus and prohibition, and compel Respondent to produce the records requested by The Enquirer its January 24 Request, and prohibit Respondent from further enforcing his unlawful expungement orders.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and accurate copy of the foregoing *Relator's Merit Brief* was served via regular U.S. Mail, postage prepaid, this 6th day of June, 2013, upon the following:

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\_\_\_\_\_  
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## APPENDIX

### 149.43 Availability of public records for inspection and copying.

(A) As used in this section:

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

(a) Medical records;

(b) Records pertaining to probation and parole proceedings or to proceedings related to the imposition of community control sanctions and post-release control sanctions;

(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 job and family services or, pursuant to section 3111.69 of the Revised Code, the office 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 2710.03 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 job and family services pursuant to section 3121.894 of the Revised Code;

(p) 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 residential and familial information;

(q) In the case of a county hospital operated pursuant to Chapter 339. of the Revised Code or a municipal hospital operated pursuant to Chapter 749. of the Revised Code, information that constitutes a trade secret, as defined in section 1333.61 of the Revised Code;

(r) Information pertaining to the recreational activities of a person under the age of eighteen;

(s) Records provided to, statements made by review board members during meetings of, and all work products of a child fatality review board acting under sections 307.621 to 307.629 of the Revised Code, and child fatality review data submitted by the child fatality review board to the department of health or a national child death review database, other than the report prepared pursuant to division (A) of section 307.626 of the Revised Code;

(t) Records provided to and statements made by the executive director of a public children services agency or a prosecuting attorney acting pursuant to section 5153.171 of the Revised Code other than the information released under that section;

(u) Test materials, examinations, or evaluation tools used in an examination for licensure as a nursing home administrator that the board of examiners of nursing home administrators administers under section 4751.04 of the Revised Code or contracts under that section with a private or government entity to administer;

(v) Records the release of which is prohibited by state or federal law;

(w) Proprietary information of or relating to any person that is submitted to or compiled by the Ohio venture capital authority created under section 150.01 of the Revised Code;

(x) Information reported and evaluations conducted pursuant to section 3701.072 of the Revised Code;

(y) Financial statements and data any person submits for any purpose to the Ohio housing finance agency or the controlling board in connection with applying for, receiving, or accounting for financial assistance from the agency, and information that identifies any individual who benefits directly or indirectly from financial assistance from the agency;

(z) Records listed in section 5101.29 of the Revised Code;

(aa) Discharges recorded with a county recorder under section 317.24 of the Revised Code, as specified in division (B)(2) of that section;

(bb) Usage information including names and addresses of specific residential and commercial customers of a municipally owned or operated public utility.

(cc) 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.

(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 or 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 a 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, 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 residential and familial information" means any information that discloses any of the following about 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:

(a) The address of the actual personal residence of a peace officer, parole officer, probation officer, bailiff, assistant prosecuting attorney, correctional employee, community-based correctional facility employee, youth services employee, firefighter, EMT, or an investigator of the bureau of criminal identification and investigation, except for the state or political subdivision in which the peace officer, parole officer, probation officer, bailiff, 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 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, 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;

(d) The name of any beneficiary of employment benefits, including, but not limited to, life insurance benefits, provided to 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 by the peace officer's, parole officer's, probation officer's, bailiff's, prosecuting attorney's, assistant prosecuting attorney's, correctional employee's, community-based correctional facility employee's, youth services employee's, firefighter's, EMT's, or investigator of the bureau of criminal identification and investigation's employer;

(e) The identity and amount of any charitable or employment benefit deduction made by the peace officer's, parole officer's, probation officer's, bailiff's, prosecuting attorney's, assistant prosecuting attorney's, correctional employee's, community-based correctional facility employee's, youth services employee's, firefighter's, EMT's, or investigator of the bureau of criminal identification and investigation's employer from the peace officer's, parole officer's, probation officer's, bailiff's, prosecuting attorney's, assistant prosecuting attorney's, correctional employee's, community-based correctional facility employee's, youth services employee's, firefighter's, EMT's, or investigator of the bureau of criminal identification and investigation'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, 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)(5) 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)(5) 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.

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.

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.

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.

(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:

(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;

(b) The social security number, birth date, or photographic image of a person under the age of eighteen;

(c) Any medical record, history, or information pertaining to a person under the age of eighteen;

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

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

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

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

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

(B)

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

the person responsible for the public record shall notify the requester of any redaction or make the redaction plainly visible. A redaction shall be deemed a denial of a request to inspect or copy the redacted information, except if federal or state law authorizes or requires a public office to make the redaction.

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

(3) If a request is ultimately denied, in part or in whole, the public office or the person responsible for the requested public record shall provide the requester with an explanation, including legal authority, setting forth why the request was denied. If the initial request was provided in writing, the explanation also shall be provided to the requester in writing. The explanation shall not preclude the public office or the person responsible for the requested public record from relying upon additional reasons or legal authority in defending an action commenced under division (C) of this section.

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

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

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

(8) 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 justiciable claim of the person.

(9)

(a) Upon written request made and signed by a journalist on or after December 16, 1999, a public office, or person responsible for public records, having custody of the records of the agency employing a specified 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 shall disclose to the journalist the address of the actual personal residence of the 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 and, if the peace officer's, parole officer's, probation officer's, bailiff's, prosecuting attorney's, assistant prosecuting attorney's, correctional employee's, community-based correctional facility employee's, youth services employee's, firefighter's, EMT's, or investigator of the bureau of criminal identification and investigation's spouse, former spouse, or child is employed by a public office, the name and address of the employer of the peace officer's, parole officer's, probation officer's, bailiff's, prosecuting attorney's, assistant prosecuting attorney's, correctional employee's, community-based correctional facility employee's, youth services employee's, firefighter's, EMT's, or investigator of the bureau of criminal identification and investigation'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.

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

(c) As used in division (B)(9) 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)

(1) If a person allegedly is aggrieved by the failure of a public office or the person responsible for public records 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 by any other failure of a public office or the person responsible for public records to comply with an obligation in accordance with division (B) of this section, the person allegedly aggrieved may commence a mandamus action to obtain a judgment that orders the public office or the person responsible for the public record to comply with division (B) of this section, that awards court costs and reasonable attorney's fees to the person that instituted the mandamus action, and, if applicable, that includes an order fixing statutory damages under division (C)(1) of this section. 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.

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

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

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

(a) 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;

(b) That 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 would serve the public policy that underlies the authority that is asserted as permitting that conduct or threatened conduct.

(2)

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

(b) If the court renders a judgment that orders the public office or the person responsible for the public record to comply with division (B) of this section, the court may award reasonable

attorney's fees subject to reduction as described in division (C)(2)(c) of this section. The court shall award reasonable attorney's fees, subject to reduction as described in division (C)(2)(c) of this section when either of the following applies:

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

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

(E)

(1) To ensure that all employees of public offices are appropriately educated about a public office's obligations under division (B) of this section, all elected officials or their appropriate designees shall attend training approved by the attorney general as provided in section 109.43 of the Revised Code. In addition, all public offices shall adopt a public records policy in compliance with this section for responding to public records requests. In adopting a public records policy under this division, a public office may obtain guidance from the model public records policy developed and provided to the public office by the attorney general under section 109.43 of the Revised Code. Except as otherwise provided in this section, the policy may not limit the number of public records that the public office will make available to a single person,

may not limit the number of public records that it will make available during a fixed period of time, and may not establish a fixed period of time before it will respond to a request for inspection or copying of public records, unless that period is less than eight hours.

(2) The public office shall distribute the public records policy adopted by the public office under division (E)(1) of this section to the employee of the public office who is the records custodian or records manager or otherwise has custody of the records of that office. The public office shall require that employee to acknowledge receipt of the copy of the public records policy. The public office shall create a poster that describes its public records policy and shall post the poster in a conspicuous place in the public office and in all locations where the public office has branch offices. The public office may post its public records policy on the internet web site of the public office if the public office maintains an internet web site. A public office that has established a manual or handbook of its general policies and procedures for all employees of the public office shall include the public records policy of the public office in the manual or handbook.

(F)

(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 (F)(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 (F)(1) and (2) of this section, "surveys, marketing, solicitation, or resale for commercial purposes" shall 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.

**2953.31 Sealing of record of conviction definitions.**

As used in sections 2953.31 to 2953.36 of the Revised Code:

(A) "Eligible offender" means anyone who has been convicted of an offense in this state or any other jurisdiction and who has not more than one felony conviction, not more than two misdemeanor convictions if the convictions are not of the same offense, or not more than one felony conviction and one misdemeanor conviction in this state or any other jurisdiction. When two or more convictions result from or are connected with the same act or result from offenses committed at the same time, they shall be counted as one conviction. When two or three convictions result from the same indictment, information, or complaint, from the same plea of guilty, or from the same official proceeding, and result from related criminal acts that were committed within a three-month period but do not result from the same act or from offenses committed at the same time, they shall be counted as one conviction, provided that a court may decide as provided in division (C)(1)(a) of section 2953.32 of the Revised Code that it is not in the public interest for the two or three convictions to be counted as one conviction.

For purposes of, and except as otherwise provided in, this division, a conviction for a minor misdemeanor, for a violation of any section in Chapter 4507., 4510., 4511., 4513., or 4549. of the Revised Code, or for a violation of a municipal ordinance that is substantially similar to any section in those chapters is not a conviction. However, a conviction for a violation of section 4511.19, 4511.251, 4549.02, 4549.021, 4549.03, 4549.042, or 4549.62 or sections 4549.41 to 4549.46 of the Revised Code, for a violation of section 4510.11 or 4510.14 of the Revised Code that is based upon the offender's operation of a vehicle during a suspension imposed under section 4511.191 or 4511.196 of the Revised Code, for a violation of a substantially equivalent municipal ordinance, for a felony violation of Title XLV of the Revised Code, or for a violation of a substantially equivalent former law of this state or former municipal ordinance shall be considered a conviction.

(B) "Prosecutor" means the county prosecuting attorney, city director of law, village solicitor, or similar chief legal officer, who has the authority to prosecute a criminal case in the court in which the case is filed.

(C) "Bail forfeiture" means the forfeiture of bail by a defendant who is arrested for the commission of a misdemeanor, other than a defendant in a traffic case as defined in Traffic Rule 2, if the forfeiture is pursuant to an agreement with the court and prosecutor in the case.

(D) "Official records" has the same meaning as in division (D) of section 2953.51 of the Revised Code.

(E) "Official proceeding" has the same meaning as in section 2921.01 of the Revised Code.

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

(G) "Post-release control" and "post-release control sanction" have the same meanings as in section 2967.01 of the Revised Code.

(H) "DNA database," "DNA record," and "law enforcement agency" have the same meanings as in section 109.573 of the Revised Code.

(I) "Fingerprints filed for record" means any fingerprints obtained by the superintendent of the bureau of criminal identification and investigation pursuant to sections 109.57 and 109.571 of the Revised Code.

**2953.32 Sealing of conviction record or bail forfeiture record.**

(A)

(1) Except as provided in section 2953.61 of the Revised Code, an eligible offender may apply to the sentencing court if convicted in this state, or to a court of common pleas if convicted in another state or in a federal court, for the sealing of the conviction record. Application may be made at the expiration of three years after the offender's final discharge if convicted of a felony, or at the expiration of one year after the offender's final discharge if convicted of a misdemeanor.

(2) Any person who has been arrested for any misdemeanor offense and who has effected a bail forfeiture may apply to the court in which the misdemeanor criminal case was pending when bail was forfeited for the sealing of the record of the case. Except as provided in section 2953.61 of the Revised Code, the application may be filed at any time after the expiration of one year from the date on which the bail forfeiture was entered upon the minutes of the court or the journal, whichever entry occurs first.

(B) Upon the filing of an application under this section, the court shall set a date for a hearing and shall notify the prosecutor for the case of the hearing on the application. The prosecutor may object to the granting of the application by filing an objection with the court prior to the date set for the hearing. The prosecutor shall specify in the objection the reasons for believing a denial of the application is justified. The court shall direct its regular probation officer, a state probation officer, or the department of probation of the county in which the applicant resides to make inquiries and written reports as the court requires concerning the applicant. If the applicant was convicted of or pleaded guilty to a violation of division (A)(2) or (B) of section 2919.21 of the Revised Code, the probation officer or county department of probation that the court directed to make inquiries concerning the applicant shall contact the child support enforcement agency

enforcing the applicant's obligations under the child support order to inquire about the offender's compliance with the child support order.

(C)

(1) The court shall do each of the following:

(a) Determine whether the applicant is an eligible offender or whether the forfeiture of bail was agreed to by the applicant and the prosecutor in the case. If the applicant applies as an eligible offender pursuant to division (A)(1) of this section and has two or three convictions that result from the same indictment, information, or complaint, from the same plea of guilty, or from the same official proceeding, and result from related criminal acts that were committed within a three-month period but do not result from the same act or from offenses committed at the same time, in making its determination under this division, the court initially shall determine whether it is not in the public interest for the two or three convictions to be counted as one conviction. If the court determines that it is not in the public interest for the two or three convictions to be counted as one conviction, the court shall determine that the applicant is not an eligible offender; if the court does not make that determination, the court shall determine that the offender is an eligible offender.

(b) Determine whether criminal proceedings are pending against the applicant;

(c) If the applicant is an eligible offender who applies pursuant to division (A)(1) of this section, determine whether the applicant has been rehabilitated to the satisfaction of the court;

(d) If the prosecutor has filed an objection in accordance with division (B) of this section, consider the reasons against granting the application specified by the prosecutor in the objection;

(e) Weigh the interests of the applicant in having the records pertaining to the applicant's conviction sealed against the legitimate needs, if any, of the government to maintain those records.

(2) If the court determines, after complying with division (C)(1) of this section, that the applicant is an eligible offender or the subject of a bail forfeiture, that no criminal proceeding is pending against the applicant, and that the interests of the applicant in having the records pertaining to the applicant's conviction or bail forfeiture sealed are not outweighed by any legitimate governmental needs to maintain those records, and that the rehabilitation of an applicant who is an eligible offender applying pursuant to division (A)(1) of this section has been attained to the satisfaction of the court, the court, except as provided in divisions (G) and (H) of this section, shall order all official records pertaining to the case sealed and, except as provided in division (F) of this section, all index references to the case deleted and, in the case of bail forfeitures, shall dismiss the charges in the case. The proceedings in the case shall be considered not to have occurred and the conviction or bail forfeiture of the person who is the subject of the proceedings shall be sealed, except that upon conviction of a subsequent offense, the sealed record of prior conviction or bail forfeiture may be considered by the court in determining the sentence or other

appropriate disposition, including the relief provided for in sections 2953.31 to 2953.33 of the Revised Code.

(3) Upon the filing of an application under this section, the applicant, unless indigent, shall pay a fee of fifty dollars. The court shall pay thirty dollars of the fee into the state treasury. It shall pay twenty dollars of the fee into the county general revenue fund if the sealed conviction or bail forfeiture was pursuant to a state statute, or into the general revenue fund of the municipal corporation involved if the sealed conviction or bail forfeiture was pursuant to a municipal ordinance.

(D) Inspection of the sealed records included in the order may be made only by the following persons or for the following purposes:

(1) By a law enforcement officer or prosecutor, or the assistants of either, to determine whether the nature and character of the offense with which a person is to be charged would be affected by virtue of the person's previously having been convicted of a crime;

(2) By the parole or probation officer of the person who is the subject of the records, for the exclusive use of the officer in supervising the person while on parole or under a community control sanction or a post-release control sanction, and in making inquiries and written reports as requested by the court or adult parole authority;

(3) Upon application by the person who is the subject of the records, by the persons named in the application;

(4) By a law enforcement officer who was involved in the case, for use in the officer's defense of a civil action arising out of the officer's involvement in that case;

(5) By a prosecuting attorney or the prosecuting attorney's assistants, to determine a defendant's eligibility to enter a pre-trial diversion program established pursuant to section 2935.36 of the Revised Code;

(6) By any law enforcement agency or any authorized employee of a law enforcement agency or by the department of rehabilitation and correction as part of a background investigation of a person who applies for employment with the agency as a law enforcement officer or with the department as a corrections officer;

(7) By any law enforcement agency or any authorized employee of a law enforcement agency, for the purposes set forth in, and in the manner provided in, section 2953.321 of the Revised Code;

(8) By the bureau of criminal identification and investigation or any authorized employee of the bureau for the purpose of providing information to a board or person pursuant to division (F) or (G) of section 109.57 of the Revised Code;

(9) By the bureau of criminal identification and investigation or any authorized employee of the bureau for the purpose of performing a criminal history records check on a person to whom a certificate as prescribed in section 109.77 of the Revised Code is to be awarded;

(10) By the bureau of criminal identification and investigation or any authorized employee of the bureau for the purpose of conducting a criminal records check of an individual pursuant to division (B) of section 109.572 of the Revised Code that was requested pursuant to any of the sections identified in division (B)(1) of that section;

(11) By the bureau of criminal identification and investigation, an authorized employee of the bureau, a sheriff, or an authorized employee of a sheriff in connection with a criminal records check described in section 311.41 of the Revised Code;

(12) By the attorney general or an authorized employee of the attorney general or a court for purposes of determining a person's classification pursuant to Chapter 2950. of the Revised Code.

When the nature and character of the offense with which a person is to be charged would be affected by the information, it may be used for the purpose of charging the person with an offense.

(E) In any criminal proceeding, proof of any otherwise admissible prior conviction may be introduced and proved, notwithstanding the fact that for any such prior conviction an order of sealing previously was issued pursuant to sections 2953.31 to 2953.36 of the Revised Code.

(F) The person or governmental agency, office, or department that maintains sealed records pertaining to convictions or bail forfeitures that have been sealed pursuant to this section may maintain a manual or computerized index to the sealed records. The index shall contain only the name of, and alphanumeric identifiers that relate to, the persons who are the subject of the sealed records, the word "sealed," and the name of the person, agency, office, or department that has custody of the sealed records, and shall not contain the name of the crime committed. The index shall be made available by the person who has custody of the sealed records only for the purposes set forth in divisions (C), (D), and (E) of this section.

(G) Notwithstanding any provision of this section or section 2953.33 of the Revised Code that requires otherwise, a board of education of a city, local, exempted village, or joint vocational school district that maintains records of an individual who has been permanently excluded under sections 3301.121 and 3313.662 of the Revised Code is permitted to maintain records regarding a conviction that was used as the basis for the individual's permanent exclusion, regardless of a court order to seal the record. An order issued under this section to seal the record of a conviction does not revoke the adjudication order of the superintendent of public instruction to permanently exclude the individual who is the subject of the sealing order. An order issued under this section to seal the record of a conviction of an individual may be presented to a district superintendent as evidence to support the contention that the superintendent should recommend that the permanent exclusion of the individual who is the subject of the sealing order be revoked. Except as otherwise authorized by this division and sections 3301.121 and 3313.662 of the Revised Code, any school employee in possession of or having access to the sealed conviction

records of an individual that were the basis of a permanent exclusion of the individual is subject to section 2953.35 of the Revised Code.

(H) For purposes of sections 2953.31 to 2953.36 of the Revised Code, DNA records collected in the DNA database and fingerprints filed for record by the superintendent of the bureau of criminal identification and investigation shall not be sealed unless the superintendent receives a certified copy of a final court order establishing that the offender's conviction has been overturned. For purposes of this section, a court order is not "final" if time remains for an appeal or application for discretionary review with respect to the order.

**2953.52 Sealing of records after not guilty finding, dismissal of proceedings or no bill by grand jury.**

(A)

(1) Any person, who is found not guilty of an offense by a jury or a court or who is the defendant named in a dismissed complaint, indictment, or information, may apply to the court for an order to seal the person's official records in the case. Except as provided in section 2953.61 of the Revised Code, the application may be filed at any time after the finding of not guilty or the dismissal of the complaint, indictment, or information is entered upon the minutes of the court or the journal, whichever entry occurs first.

(2) Any person, against whom a no bill is entered by a grand jury, may apply to the court for an order to seal his official records in the case. Except as provided in section 2953.61 of the Revised Code, the application may be filed at any time after the expiration of two years after the date on which the foreperson or deputy foreperson of the grand jury reports to the court that the grand jury has reported a no bill.

(B)

(1) Upon the filing of an application pursuant to division (A) of this section, the court shall set a date for a hearing and shall notify the prosecutor in the case of the hearing on the application. The prosecutor may object to the granting of the application by filing an objection with the court prior to the date set for the hearing. The prosecutor shall specify in the objection the reasons the prosecutor believes justify a denial of the application.

(2) The court shall do each of the following, except as provided in division (B)(3) of this section:

(a)

(i) Determine whether the person was found not guilty in the case, or the complaint, indictment, or information in the case was dismissed, or a no bill was returned in the case and a period of two years or a longer period as required by section 2953.61 of the Revised Code has expired from the date of the report to the court of that no bill by the foreperson or deputy foreperson of the grand jury;

(ii) If the complaint, indictment, or information in the case was dismissed, determine whether it was dismissed with prejudice or without prejudice and, if it was dismissed without prejudice, determine whether the relevant statute of limitations has expired;

(b) Determine whether criminal proceedings are pending against the person;

(c) If the prosecutor has filed an objection in accordance with division (B)(1) of this section, consider the reasons against granting the application specified by the prosecutor in the objection;

(d) Weigh the interests of the person in having the official records pertaining to the case sealed against the legitimate needs, if any, of the government to maintain those records.

(3) If the court determines after complying with division (B)(2)(a) of this section that the person was found not guilty in the case, that the complaint, indictment, or information in the case was dismissed with prejudice, or that the complaint, indictment, or information in the case was dismissed without prejudice and that the relevant statute of limitations has expired, the court shall issue an order to the superintendent of the bureau of criminal identification and investigation directing that the superintendent seal or cause to be sealed the official records in the case consisting of DNA specimens that are in the possession of the bureau and all DNA records and DNA profiles. The determinations and considerations described in divisions (B)(2)(b), (c), and (d) of this section do not apply with respect to a determination of the court described in this division.

(4) The determinations described in this division are separate from the determination described in division (B)(3) of this section. If the court determines, after complying with division (B)(2) of this section, that the person was found not guilty in the case, that the complaint, indictment, or information in the case was dismissed, or that a no bill was returned in the case and that the appropriate period of time has expired from the date of the report to the court of the no bill by the foreperson or deputy foreperson of the grand jury; that no criminal proceedings are pending against the person; and the interests of the person in having the records pertaining to the case sealed are not outweighed by any legitimate governmental needs to maintain such records, or if division (E)(2)(b) of section 4301.69 of the Revised Code applies, in addition to the order required under division (B)(3) of this section, the court shall issue an order directing that all official records pertaining to the case be sealed and that, except as provided in section 2953.53 of the Revised Code, the proceedings in the case be deemed not to have occurred.

(5) Any DNA specimens, DNA records, and DNA profiles ordered to be sealed under this section shall not be sealed if the person with respect to whom the order applies is otherwise eligible to have DNA records or a DNA profile in the national DNA index system.