

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO
ex rel. PLUNDERBUND MEDIA, LLC

CASE NUMBER 2013-0596

Relator

V.

AN ORIGINAL ACTION

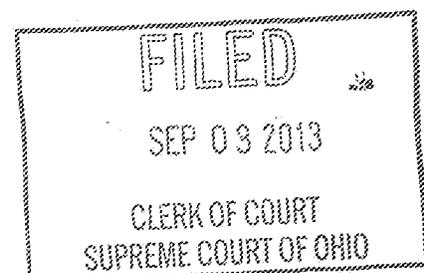
JOHN BORN
DIRECTOR, OHIO DEPARTMENT OF PUBLIC SAFETY
(Successor to Thomas Charles)

Respondent

AGREED STATEMENT OF FACTS

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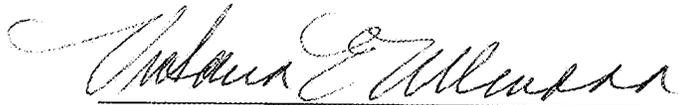
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The parties agree to the following stipulated facts and attached exhibits:

1. Joseph Mismas emailed a formal written public documents request to the Ohio Department of Public Safety ("Department") on August 14, 2012. (Joint Exhibit 1.)
2. The Department denied this request on September 19, 2012. (Joint Exhibit 2.)
3. Mismas then requested confirmation of this denial and clarified his request. (Joint Exhibit 3.)
4. The Department responded to Mismas' follow-up email. (Joint Exhibits 4-5.)
5. On November 13, 2012, Victoria E. Ullmann, counsel to Plunderbund emailed the Department. (Joint Exhibit 6.)
6. On December 14, 2012, the Department responded to Ms. Ullmann's email. (Joint Exhibit 7.)

MICHAEL DeWINE
Ohio Attorney General

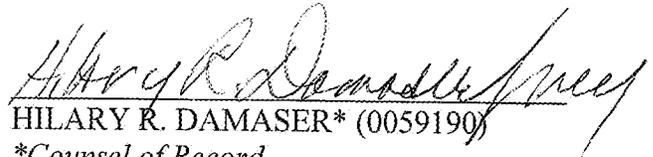


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**Ohio Department of Public Safety**

Policy Number : DPS-400.04

ADMINISTRATION OF PUBLIC RECORDS REQUESTSDate of Revision : **7/25/2011**Priority Review : **All Employees**Distribution : **All ODPS Divisions****Summary of Revisions**

Complete revision of policy.

Purpose

To provide guidelines for responding to public records.

To provide a Public Records Request Fee Schedule and procedures and criteria for the release of agency records.

Policy**A. STATUTORY AUTHORITY**

1. **Public Records Law** - Ohio Revised Code §149.43

B. ADMINISTRATION OF PUBLIC RECORDS REQUESTS

1. **Public Records Requests Database** - The Department of Public Safety (DPS) shall maintain a database for inputting, tracking, and processing public records requests.
2. **Public Records Administrator** - A Public Records Administrator will be assigned by each DPS Division. All requests that are received by DPS shall be forwarded to the Public Records Administrator for the applicable Division. The Public Records Administrator shall respond to all routine requests, including:
 - a. Evaluating each request and determining the most efficient manner for responding to the request;
 - b. Working with the requester to clarify and/or revise the request, as necessary;
 - c. Verifying the status of administrative and criminal investigations/cases prior to the release of responsive records, including initiating contact with the investigator(s) and/or local commander(s) as necessary;
 - d. Where appropriate, conducting a search for responsive public records, redacting any exempt information, and making the records available for inspection and/or copying in accordance with this policy;
 - e. Ensuring that a copy of any public record provided to the requester is maintained in a separate file, in electronic form if practicable;
 - f. Referring all non-routine requests, including requests for e-mails, to Legal Services;

- g. Updating the requests in the database.
3. **Public Records Coordinator** - An attorney will be assigned to each Division as the Public Records Coordinator to oversee non-routine requests including:
 - a. Evaluating each request and determining the most efficient manner in responding to the request;
 - b. Working with the Division Public Records Administrator and the requester to clarify and/or revise the request, as necessary;
 - c. Initiating contact with local prosecutors as necessary; and
 - d. Conducting a search for responsive public records and reviewing and redacting records as appropriate;
 - e. Consulting with the Public Records Manager as necessary.
 4. **Public Records Manager** - An assigned Legal Services attorney shall be the Public Records Manager and shall have overall responsibility for managing the Department's public records requests, including:
 - a. Management of the database;
 - b. Monitoring DPS responses to public records requests;
 - c. Ensuring DPS compliance with all legal requirements regarding public records requests;
 - d. Where appropriate, reviewing and redacting responsive public records, and ensuring that the records are available for inspection and/or copying.

C. PUBLIC RECORD DEFINED

1. **Definition** - A "public record" is any item that is kept by DPS that:
 - a. is stored on a fixed medium;
 - b. was created, received, or sent under the jurisdiction of DPS; and
 - c. documents the organization, functions, policies, decisions, procedures, operations, or other activities of DPS.
2. **Electronic Records**
 - a. An electronic record exists if a computer is already programmed to produce the record through simple sorting, filtering or querying.
 - b. Electronic records are to be treated in the same fashion as records in other formats.
3. **Limitations**
 - a. DPS is not required to create records that do not exist or to perform new analysis of existing information in order to respond to a public records request.
 - b. No DPS Division or office may agree to maintain the confidentiality of public records which would otherwise be subject to disclosure.
4. **Exemptions** - Items that are not a "Public Record" include, but are not

limited to:

- a. Records prohibited from release by state or federal law.
- b. Attorney-client privileged materials.
- c. Records ordered sealed by a court.
- d. Records containing information protected from disclosure by a constitutional right to privacy under the Ohio or U.S. Constitutions.
- e. Medical records, including records exempt from disclosure under HIPAA.
- f. Intellectual property records.
- g. Trial preparation records.
- h. Residential and familial information of peace officers, firefighters, emergency medical technicians, parole officers, prosecuting attorneys, assistant prosecuting attorneys, correctional employees, and youth services employees.
- i. Sensitive personal information, including an individual's social security number, or medical or disability information.
- j. Home addresses of public employees, except where the address documents the organization, functions, policies, decisions, procedures, operations, or other activities of DPS.
- k. Confidential law enforcement investigatory records, to include records regarding open investigations and uncharged suspects.
- l. Infrastructure and Security Records.
- m. Probation and Parole Records.

D. AVAILABILITY OF PUBLIC RECORDS

1. **Availability of Public Records Upon Request** - DPS shall, upon request, promptly prepare and make available for inspection all public records. Copies of public records shall be made available at cost and within a reasonable period of time.
2. **Pre-release Review** - The Department has an affirmative duty to review any and all records deemed initially responsive to a public records request to prevent the inadvertent release of protected or sensitive materials to the public and/or to ensure that all responsive records are being provided.
3. **Availability of Non-Exempt Information** - If a public record contains information that is exempt under the Public Records Act, the exempt portions of the record shall be redacted and the remainder released.
4. **Retaliation Prohibited** - No DPS employee may retaliate against any person for the exercise of any rights under the public records laws.

E. FORM OF REQUESTS

1. **Written Request/Identification Not Mandatory** - Unless specifically required by state or federal law, DPS cannot require a requester to put a request in writing, identify him/herself, or identify the intended use of the requested records.

- a. The Department may ask for such information when it is believed that any of this information would enhance the Department's ability to identify, locate, and deliver the public records sought by the requester.
- b. Prior to asking a requester for such information, the employee shall inform the requester of the following:
 - A written request is not mandatory.
 - The requester may decline to reveal his/her identity or the intended use of the records.

F. RESPONSES TO PUBLIC RECORDS REQUESTS

1. General Provisions

- a. All public records requests, including requests to inspect a record, shall be entered into the public records requests database. The Department's Communications Office shall be notified of all media requests.
- b. All requests must be acknowledged no later than 10 business days from receipt of the request.
- c. If a requester makes a vague, ambiguous, or overly broad request such that DPS cannot reasonably identify what records are being requested, the requester shall be informed of the manner in which records are maintained and accessed by DPS in the ordinary course of business, and provided with an opportunity to revise the request.
- d. Requests should be closed once responsive records have been provided to the requester or the requester has been notified that there are no records responsive to the request. However, a request should be held open for 6 months if the requester has been asked to clarify and/or revise the request or the requester has been notified that responsive records are available for inspection and /or pick up. If the requester has not responded within 6 months, the request should be closed.
- e. When making a public record available for inspection or copying, DPS shall notify the requester of any redactions or make any redactions plainly visible.
- f. Records pertaining to a pending criminal case shall not be released.
- g. Any denial, in whole or in part, of a public records request, shall be approved by Legal Services. If a request is denied, in part or in whole, DPS shall provide the requester with an explanation, including legal authority. If the request was provided in writing, a written explanation shall be provided.
- h. A request for information (e.g., the number of people employed by DPS) is not a public records request. Additionally, the Freedom of Information Act (FOIA) does not apply to state agencies. However, a request made under FOIA should be evaluated to determine if the request could also be a public records request.
- i. Questions and/or concerns regarding requests from attorneys should

be directed to the Legal Services.

- j. A request by a DPS employee for records which are not specifically related to the official job capacity of the requesting employee is a public records request and shall be entered into the database and processed in accordance with this policy.

2. Routine Requests

- a. The Division Public Records Administrator shall be responsible for coordinating the responses to all routine public records requests. Routine requests, and corresponding responsive records, do not require a legal review and need not be forwarded to Legal Services.
- b. Routine requests include, but are not limited to the following topics:
 - Routine crash or accident reports/routine traffic stops;
 - Meeting minutes;
 - Budgets;
 - Salary information;
 - Policies and procedures;
 - Forms and applications;
 - Contracts;
 - Personnel rosters;
 - 911 or dispatch tapes where there is no ongoing criminal investigation or prosecution; and
 - Requests for BMV or other records as part of a background investigation.

3. Bulk Public Records Requests (e.g. "data dumps")

- a. All bulk public records requests shall be referred to Legal Services.
- b. No bulk public records shall be provided except pursuant to a contract, in a form approved by Legal Services.

4. Non-Routine Requests

- a. All other Public Records Requests should be immediately referred to and/or transferred to Legal Services, and unredacted copies of possible responsive records should be immediately forwarded to Legal Services for review. These requests include, but are not limited to, requests for the following:
 - Records concerning any statewide elected official, member of the General Assembly, state employees identified by the requester by name, the Director's Office or any DPS Senior Advisors.
 - Records concerning any alleged wrongdoing or illegal conduct, including any administrative or criminal investigation.
 - Records concerning and/or submitted by DRC inmates.
- b. To avoid delays in responding to a request, if a division-level review of

possible responsive records is deemed necessary, the review should be conducted concurrently with, not prior to, the legal review.

5. **Uncertain Requests**

- a. Questions regarding public records requests should be directed to Legal Services.

G. **PRODUCTION OF PUBLIC RECORDS**

1. **General Provisions** – The requester may choose to inspect and/or receive copies of public records. Records should be prepared in accordance with the procedures established by the Division Public Records Coordinator as set forth in this policy.
2. **Inspection of Public Records** – Records may be inspected during normal **business** hours. A DPS employee shall accompany the requester to ensure that original records are not removed or altered.
3. **Copies** - The requester may choose to receive copies of public records in any format that can be reasonably duplicated as a part of normal DPS operations. Only authorized DPS staff members will make copies of the requested record(s). Copies will be provided via U.S. mail or by other reasonable means of delivery.
4. **Costs**
 - a. **General Costs**
 - There is no fee for viewing records.
 - DPS, at the discretion of Legal Services, may require the person making the request to pay in advance. Advance payment shall be required for all requests made by an anonymous requester.
 - Except as otherwise provided in this policy or by statute, records shall be provided at a cost of \$.05/page plus postage. If the cost is less than two dollars and fifty cents (\$2.50), the records will be provided at no charge. However, multiple requests by the same requester can be combined into one comprehensive invoice.
 - Except as otherwise provided in this policy, bulk records shall be provided at the cost to DPS to extract or provide the data to the requester.
 - b. **Specific Costs**
 - Certified Abstract Driver Record Reports: \$5.00 each per ORC 4509.05
 - Certified Driver Search for Status: \$5.00 each name per ORC 4501.34; \$5.00 each CDL per ORC 4506.08
 - Certified Vehicle Registration Searches: \$5.00 each name, number, or fact searched or reported on per ORC 4503.26 – Written Report; \$5.00 each per ORC 4503.26 – Attested Photographic Copies
 - Certified Title Records: \$5.00 each name, number, or fact searched or reported on per ORC 4505.14; \$25.00 per thousand

for list of 3,000 or more per ORC 4505.14; \$5.00 each attested copy per ORC 4505.14

- CD/DVD: \$1.50 each
- Video Tape: \$2.50 each
- Photographs: \$12.00 each set
- Traffic Crash Reports: \$4.00 each per ORC 5502.12; additional fee for photographs.

c. Fee Waiver

- Cooperative requests which support and further the overall DPS mission may be exempted from normal as designated by Legal Services.

Current Form and Supplemental References

Ohio Revised Code

- ORC 149.43 - Availability of Public Records
- ORC 4501.27 - Disclosure of Personal Information in Motor Vehicles Records (Driver's Privacy Protection Act)
- ORC 4501.34 - Proceedings of registrar
- ORC 4503.26 - Lists of registration information - acceptance of bids for preparation
- ORC 4505.14 - Fees for supplying title information and copies
- ORC 4506.08 - Application and driving record information fees
- ORC 4509.05 - Information furnished by registrar - fee
- ORC 5502.12 - Use of written report of motor vehicle accident

Ohio Administrative Code

- OAC 4501:1-12-02 - Driver's Privacy Protection

Ohio Department of Public Safety

- DPS Public Records Request Database Guide - See attachment to policy "So you've received a public records request ... Now what?" Hyperlink that may be added as a shortcut on your desktop - <http://web/dirsys/dirdb/english/lrlog.asp>

Standard References

82.1.01

Policy References

- | | |
|-------------------|--------------------------------------------------------------------------------------------------|
| <u>DPS-200.05</u> | OPERATIONAL SECURITY (OPSEC) |
| <u>DPS-200.06</u> | COLLECTION AND DESTRUCTION OF DOCUMENTS AND OTHER MEDIA CONTAINING SENSITIVE INFORMATION (OPSEC) |

- DPS-400.07 RECORDS MANAGEMENT AND RETENTION
- DPS-401.01 COMMUNICATIONS, MEDIA RELATIONS, MARKETING, VISUAL COMMUNICATIONS, COMMUNITY AFFAIRS
- DPS-800.01 USE OF INTERNET, E-MAIL, AND OTHER IT RESOURCES
- OSP-103.22 AUDIO/VIDEO USE, STORAGE, RELEASE, AND DESTRUCTION
- OSP-403.22 RECORDS MANAGEMENT

Attachment(s)

- DPS-400.04 PRR Database Guide.PDF
- DPS-400.04 PRR Process Flowchart.PDF