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Committee**

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Sub. H. B. No. 139

Representatives Perales, Keller

**Cosponsors: Representatives Hambley, Fedor, Seitz, Dean, Antonio, Brenner,
Craig, Cupp, Green, Greenspan, Lang, Retherford, Riedel, Young**

Senators Uecker, Coley, Skindell

A BILL

To amend section 149.43 of the Revised Code to
eliminate the public disclosure exemption for
any permanently retained record 75 years after
the date of its creation, with exceptions.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

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

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

(1) "Public record" means 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;	16
(b) Records pertaining to probation and parole proceedings	17
or to proceedings related to the imposition of community control	18
sanctions and post-release control sanctions;	19
(c) Records pertaining to actions under section 2151.85	20
and division (C) of section 2919.121 of the Revised Code and to	21
appeals of actions arising under those sections;	22
(d) Records pertaining to adoption proceedings, including	23
the contents of an adoption file maintained by the department of	24
health under sections 3705.12 to 3705.124 of the Revised Code;	25
(e) Information in a record contained in the putative	26
father registry established by section 3107.062 of the Revised	27
Code, regardless of whether the information is held by the	28
department of job and family services or, pursuant to section	29
3111.69 of the Revised Code, the office of child support in the	30
department or a child support enforcement agency;	31
(f) Records specified in division (A) of section 3107.52	32
of the Revised Code;	33
(g) Trial preparation records;	34
(h) Confidential law enforcement investigatory records;	35
(i) Records containing information that is confidential	36
under section 2710.03 or 4112.05 of the Revised Code;	37
(j) DNA records stored in the DNA database pursuant to	38
section 109.573 of the Revised Code;	39
(k) Inmate records released by the department of	40
rehabilitation and correction to the department of youth	41
services or a court of record pursuant to division (E) of	42

section 5120.21 of the Revised Code; 43

(l) Records maintained by the department of youth services 44
pertaining to children in its custody released by the department 45
of youth services to the department of rehabilitation and 46
correction pursuant to section 5139.05 of the Revised Code; 47

(m) Intellectual property records; 48

(n) Donor profile records; 49

(o) Records maintained by the department of job and family 50
services pursuant to section 3121.894 of the Revised Code; 51

(p) Peace officer, parole officer, probation officer, 52
bailiff, prosecuting attorney, assistant prosecuting attorney, 53
correctional employee, community-based correctional facility 54
employee, youth services employee, firefighter, EMT, 55
investigator of the bureau of criminal identification and 56
investigation, or federal law enforcement officer residential 57
and familial information; 58

(q) In the case of a county hospital operated pursuant to 59
Chapter 339. of the Revised Code or a municipal hospital 60
operated pursuant to Chapter 749. of the Revised Code, 61
information that constitutes a trade secret, as defined in 62
section 1333.61 of the Revised Code; 63

(r) Information pertaining to the recreational activities 64
of a person under the age of eighteen; 65

(s) In the case of a child fatality review board acting 66
under sections 307.621 to 307.629 of the Revised Code or a 67
review conducted pursuant to guidelines established by the 68
director of health under section 3701.70 of the Revised Code, 69
records provided to the board or director, statements made by 70

board members during meetings of the board or by persons 71
participating in the director's review, and all work products of 72
the board or director, and in the case of a child fatality 73
review board, child fatality review data submitted by the board 74
to the department of health or a national child death review 75
database, other than the report prepared pursuant to division 76
(A) of section 307.626 of the Revised Code; 77

(t) Records provided to and statements made by the 78
executive director of a public children services agency or a 79
prosecuting attorney acting pursuant to section 5153.171 of the 80
Revised Code other than the information released under that 81
section; 82

(u) Test materials, examinations, or evaluation tools used 83
in an examination for licensure as a nursing home administrator 84
that the board of executives of long-term services and supports 85
administers under section 4751.04 of the Revised Code or 86
contracts under that section with a private or government entity 87
to administer; 88

(v) Records the release of which is prohibited by state or 89
federal law; 90

(w) Proprietary information of or relating to any person 91
that is submitted to or compiled by the Ohio venture capital 92
authority created under section 150.01 of the Revised Code; 93

(x) Financial statements and data any person submits for 94
any purpose to the Ohio housing finance agency or the 95
controlling board in connection with applying for, receiving, or 96
accounting for financial assistance from the agency, and 97
information that identifies any individual who benefits directly 98
or indirectly from financial assistance from the agency; 99

(y) Records listed in section 5101.29 of the Revised Code;	100
(z) Discharges recorded with a county recorder under	101
section 317.24 of the Revised Code, as specified in division (B)	102
(2) of that section;	103
(aa) Usage information including names and addresses of	104
specific residential and commercial customers of a municipally	105
owned or operated public utility;	106
(bb) Records described in division (C) of section 187.04	107
of the Revised Code that are not designated to be made available	108
to the public as provided in that division;	109
(cc) Information and records that are made confidential,	110
privileged, and not subject to disclosure under divisions (B)	111
and (C) of section 2949.221 of the Revised Code;	112
(dd) Personal information, as defined in section 149.45 of	113
the Revised Code;	114
(ee) The confidential name, address, and other personally	115
identifiable information of a program participant in the address	116
confidentiality program established under sections 111.41 to	117
111.47 of the Revised Code, including the contents of any	118
application for absent voter's ballots, absent voter's ballot	119
identification envelope statement of voter, or provisional	120
ballot affirmation completed by a program participant who has a	121
confidential voter registration record, and records or portions	122
of records pertaining to that program that identify the number	123
of program participants that reside within a precinct, ward,	124
township, municipal corporation, county, or any other geographic	125
area smaller than the state. As used in this division,	126
"confidential address" and "program participant" have the	127
meaning defined in section 111.41 of the Revised Code.	128

(ff) Orders for active military service of an individual 129
serving or with previous service in the armed forces of the 130
United States, including a reserve component, or the Ohio 131
organized militia, except that, such order becomes a public 132
record on the day that is fifteen years after the published date 133
or effective date of the call to order. 134

A record that is not a public record under division (A) (1) 135
of this section and that, under law, is permanently retained 136
becomes a public record on the day that is seventy-five years 137
after the day on which the record was created, except for any 138
record protected by the attorney-client privilege, a trial 139
preparation record as defined in this section, a statement 140
prohibiting the release of identifying information signed under 141
section 3107.083 of the Revised Code, a denial of release form 142
filed pursuant to section 3107.46 of the Revised Code, or any 143
record that is exempt from release or disclosure under section 144
149.433 of the Revised Code. If the record is a birth 145
certificate and a biological parent's name redaction request 146
form has been accepted under section 3107.391 of the Revised 147
Code, the name of that parent shall be redacted from the birth 148
certificate before it is released under this paragraph. If any 149
other section of the Revised Code establishes a time period for 150
disclosure of a record that conflicts with the time period 151
specified in this section, the time period in the other section 152
prevails. 153

(2) "Confidential law enforcement investigatory record" 154
means any record that pertains to a law enforcement matter of a 155
criminal, quasi-criminal, civil, or administrative nature, but 156
only to the extent that the release of the record would create a 157
high probability of disclosure of any of the following: 158

(a) The identity of a suspect who has not been charged 159
with the offense to which the record pertains, or of an 160
information source or witness to whom confidentiality has been 161
reasonably promised; 162

(b) Information provided by an information source or 163
witness to whom confidentiality has been reasonably promised, 164
which information would reasonably tend to disclose the source's 165
or witness's identity; 166

(c) Specific confidential investigatory techniques or 167
procedures or specific investigatory work product; 168

(d) Information that would endanger the life or physical 169
safety of law enforcement personnel, a crime victim, a witness, 170
or a confidential information source. 171

(3) "Medical record" means any document or combination of 172
documents, except births, deaths, and the fact of admission to 173
or discharge from a hospital, that pertains to the medical 174
history, diagnosis, prognosis, or medical condition of a patient 175
and that is generated and maintained in the process of medical 176
treatment. 177

(4) "Trial preparation record" means any record that 178
contains information that is specifically compiled in reasonable 179
anticipation of, or in defense of, a civil or criminal action or 180
proceeding, including the independent thought processes and 181
personal trial preparation of an attorney. 182

(5) "Intellectual property record" means a record, other 183
than a financial or administrative record, that is produced or 184
collected by or for faculty or staff of a state institution of 185
higher learning in the conduct of or as a result of study or 186
research on an educational, commercial, scientific, artistic, 187

technical, or scholarly issue, regardless of whether the study 188
or research was sponsored by the institution alone or in 189
conjunction with a governmental body or private concern, and 190
that has not been publicly released, published, or patented. 191

(6) "Donor profile record" means all records about donors 192
or potential donors to a public institution of higher education 193
except the names and reported addresses of the actual donors and 194
the date, amount, and conditions of the actual donation. 195

(7) "Peace officer, parole officer, probation officer, 196
bailiff, prosecuting attorney, assistant prosecuting attorney, 197
correctional employee, community-based correctional facility 198
employee, youth services employee, firefighter, EMT, 199
investigator of the bureau of criminal identification and 200
investigation, or federal law enforcement officer residential 201
and familial information" means any information that discloses 202
any of the following about a peace officer, parole officer, 203
probation officer, bailiff, prosecuting attorney, assistant 204
prosecuting attorney, correctional employee, community-based 205
correctional facility employee, youth services employee, 206
firefighter, EMT, investigator of the bureau of criminal 207
identification and investigation, or federal law enforcement 208
officer: 209

(a) The address of the actual personal residence of a 210
peace officer, parole officer, probation officer, bailiff, 211
assistant prosecuting attorney, correctional employee, 212
community-based correctional facility employee, youth services 213
employee, firefighter, EMT, an investigator of the bureau of 214
criminal identification and investigation, or federal law 215
enforcement officer, except for the state or political 216
subdivision in which the peace officer, parole officer, 217

probation officer, bailiff, assistant prosecuting attorney, 218
correctional employee, community-based correctional facility 219
employee, youth services employee, firefighter, EMT, 220
investigator of the bureau of criminal identification and 221
investigation, or federal law enforcement officer resides; 222

(b) Information compiled from referral to or participation 223
in an employee assistance program; 224

(c) The social security number, the residential telephone 225
number, any bank account, debit card, charge card, or credit 226
card number, or the emergency telephone number of, or any 227
medical information pertaining to, a peace officer, parole 228
officer, probation officer, bailiff, prosecuting attorney, 229
assistant prosecuting attorney, correctional employee, 230
community-based correctional facility employee, youth services 231
employee, firefighter, EMT, investigator of the bureau of 232
criminal identification and investigation, or federal law 233
enforcement officer; 234

(d) The name of any beneficiary of employment benefits, 235
including, but not limited to, life insurance benefits, provided 236
to a peace officer, parole officer, probation officer, bailiff, 237
prosecuting attorney, assistant prosecuting attorney, 238
correctional employee, community-based correctional facility 239
employee, youth services employee, firefighter, EMT, 240
investigator of the bureau of criminal identification and 241
investigation, or federal law enforcement officer by the peace 242
officer's, parole officer's, probation officer's, bailiff's, 243
prosecuting attorney's, assistant prosecuting attorney's, 244
correctional employee's, community-based correctional facility 245
employee's, youth services employee's, firefighter's, EMT's, 246
investigator of the bureau of criminal identification and 247

investigation's, or federal law enforcement officer's employer; 248

(e) The identity and amount of any charitable or 249
employment benefit deduction made by the peace officer's, parole 250
officer's, probation officer's, bailiff's, prosecuting 251
attorney's, assistant prosecuting attorney's, correctional 252
employee's, community-based correctional facility employee's, 253
youth services employee's, firefighter's, EMT's, investigator of 254
the bureau of criminal identification and investigation's, or 255
federal law enforcement officer's employer from the peace 256
officer's, parole officer's, probation officer's, bailiff's, 257
prosecuting attorney's, assistant prosecuting attorney's, 258
correctional employee's, community-based correctional facility 259
employee's, youth services employee's, firefighter's, EMT's, 260
investigator of the bureau of criminal identification and 261
investigation's, or federal law enforcement officer's 262
compensation unless the amount of the deduction is required by 263
state or federal law; 264

(f) The name, the residential address, the name of the 265
employer, the address of the employer, the social security 266
number, the residential telephone number, any bank account, 267
debit card, charge card, or credit card number, or the emergency 268
telephone number of the spouse, a former spouse, or any child of 269
a peace officer, parole officer, probation officer, bailiff, 270
prosecuting attorney, assistant prosecuting attorney, 271
correctional employee, community-based correctional facility 272
employee, youth services employee, firefighter, EMT, 273
investigator of the bureau of criminal identification and 274
investigation, or federal law enforcement officer; 275

(g) A photograph of a peace officer who holds a position 276
or has an assignment that may include undercover or plain 277

clothes positions or assignments as determined by the peace 278
officer's appointing authority. 279

(8) As used in divisions (A) (7) and (B) (9) of this 280
section, ~~"peace~~ 281

"Peace officer" has the same meaning as in section 109.71 282
of the Revised Code and also includes the superintendent and 283
troopers of the state highway patrol; it does not include the 284
sheriff of a county or a supervisory employee who, in the 285
absence of the sheriff, is authorized to stand in for, exercise 286
the authority of, and perform the duties of the sheriff. 287

~~As used in divisions (A) (7) and (B) (9) of this section,~~ 288
~~"correctional"~~ "Correctional employee" means any employee of the 289
department of rehabilitation and correction who in the course of 290
performing the employee's job duties has or has had contact with 291
inmates and persons under supervision. 292

~~As used in divisions (A) (7) and (B) (9) of this section,~~ 293
~~"youth"~~ "Youth services employee" means any employee of the 294
department of youth services who in the course of performing the 295
employee's job duties has or has had contact with children 296
committed to the custody of the department of youth services. 297

~~As used in divisions (A) (7) and (B) (9) of this section,~~ 298
~~"firefighter"~~ "Firefighter" means any regular, paid or 299
volunteer, member of a lawfully constituted fire department of a 300
municipal corporation, township, fire district, or village. 301

~~As used in divisions (A) (7) and (B) (9) of this section,~~ 302
"EMT" means EMTs-basic, EMTs-I, and paramedics that provide 303
emergency medical services for a public emergency medical 304
service organization. "Emergency medical service organization," 305
"EMT-basic," "EMT-I," and "paramedic" have the same meanings as 306

in section 4765.01 of the Revised Code. 307

~~As used in divisions (A) (7) and (B) (9) of this section,~~ 308
~~"investigator"~~ Investigator of the bureau of criminal 309
identification and investigation" has the meaning defined in 310
section 2903.11 of the Revised Code. 311

~~As used in divisions (A) (7) and (B) (9) of this section,~~ 312
~~"federal"~~ Federal law enforcement officer" has the meaning 313
defined in section 9.88 of the Revised Code. 314

~~(8)~~ ~~(9)~~ "Information pertaining to the recreational 315
activities of a person under the age of eighteen" means 316
information that is kept in the ordinary course of business by a 317
public office, that pertains to the recreational activities of a 318
person under the age of eighteen years, and that discloses any 319
of the following: 320

(a) The address or telephone number of a person under the 321
age of eighteen or the address or telephone number of that 322
person's parent, guardian, custodian, or emergency contact 323
person; 324

(b) The social security number, birth date, or 325
photographic image of a person under the age of eighteen; 326

(c) Any medical record, history, or information pertaining 327
to a person under the age of eighteen; 328

(d) Any additional information sought or required about a 329
person under the age of eighteen for the purpose of allowing 330
that person to participate in any recreational activity 331
conducted or sponsored by a public office or to use or obtain 332
admission privileges to any recreational facility owned or 333
operated by a public office. 334

~~(9)~~ (10) "Community control sanction" has the same meaning 335
as in section 2929.01 of the Revised Code. 336

~~(10)~~ (11) "Post-release control sanction" has the same 337
meaning as in section 2967.01 of the Revised Code. 338

~~(11)~~ (12) "Redaction" means obscuring or deleting any 339
information that is exempt from the duty to permit public 340
inspection or copying from an item that otherwise meets the 341
definition of a "record" in section 149.011 of the Revised Code. 342

~~(12)~~ (13) "Designee" and "elected official" have the same 343
meanings as in section 109.43 of the Revised Code. 344

(B) (1) Upon request and subject to division (B) (8) of this 345
section, all public records responsive to the request shall be 346
promptly prepared and made available for inspection to any 347
person at all reasonable times during regular business hours. 348
Subject to division (B) (8) of this section, upon request, a 349
public office or person responsible for public records shall 350
make copies of the requested public record available at cost and 351
within a reasonable period of time. If a public record contains 352
information that is exempt from the duty to permit public 353
inspection or to copy the public record, the public office or 354
the person responsible for the public record shall make 355
available all of the information within the public record that 356
is not exempt. When making that public record available for 357
public inspection or copying that public record, the public 358
office or the person responsible for the public record shall 359
notify the requester of any redaction or make the redaction 360
plainly visible. A redaction shall be deemed a denial of a 361
request to inspect or copy the redacted information, except if 362
federal or state law authorizes or requires a public office to 363
make the redaction. 364

(2) To facilitate broader access to public records, a 365
public office or the person responsible for public records shall 366
organize and maintain public records in a manner that they can 367
be made available for inspection or copying in accordance with 368
division (B) of this section. A public office also shall have 369
available a copy of its current records retention schedule at a 370
location readily available to the public. If a requester makes 371
an ambiguous or overly broad request or has difficulty in making 372
a request for copies or inspection of public records under this 373
section such that the public office or the person responsible 374
for the requested public record cannot reasonably identify what 375
public records are being requested, the public office or the 376
person responsible for the requested public record may deny the 377
request but shall provide the requester with an opportunity to 378
revise the request by informing the requester of the manner in 379
which records are maintained by the public office and accessed 380
in the ordinary course of the public office's or person's 381
duties. 382

(3) If a request is ultimately denied, in part or in 383
whole, the public office or the person responsible for the 384
requested public record shall provide the requester with an 385
explanation, including legal authority, setting forth why the 386
request was denied. If the initial request was provided in 387
writing, the explanation also shall be provided to the requester 388
in writing. The explanation shall not preclude the public office 389
or the person responsible for the requested public record from 390
relying upon additional reasons or legal authority in defending 391
an action commenced under division (C) of this section. 392

(4) Unless specifically required or authorized by state or 393
federal law or in accordance with division (B) of this section, 394
no public office or person responsible for public records may 395

limit or condition the availability of public records by 396
requiring disclosure of the requester's identity or the intended 397
use of the requested public record. Any requirement that the 398
requester disclose the requester's identity or the intended use 399
of the requested public record constitutes a denial of the 400
request. 401

(5) A public office or person responsible for public 402
records may ask a requester to make the request in writing, may 403
ask for the requester's identity, and may inquire about the 404
intended use of the information requested, but may do so only 405
after disclosing to the requester that a written request is not 406
mandatory ~~and, that the requester may decline to reveal the~~ 407
~~requester's identity or the intended use,~~ and when a written 408
request or disclosure of the identity or intended use would 409
benefit the requester by enhancing the ability of the public 410
office or person responsible for public records to identify, 411
locate, or deliver the public records sought by the requester. 412

(6) If any person ~~chooses to obtain requests~~ a copy of a 413
public record in accordance with division (B) of this section, 414
the public office or person responsible for the public record 415
may require that person to pay in advance the cost involved in 416
providing the copy of the public record in accordance with the 417
choice made by the person seeking the copy under this division. 418
The public office or the person responsible for the public 419
record shall permit that person to choose to have the public 420
record duplicated upon paper, upon the same medium upon which 421
the public office or person responsible for the public record 422
keeps it, or upon any other medium upon which the public office 423
or person responsible for the public record determines that it 424
reasonably can be duplicated as an integral part of the normal 425
operations of the public office or person responsible for the 426

public record. When the person seeking the copy makes a choice 427
under this division, the public office or person responsible for 428
the public record shall provide a copy of it in accordance with 429
the choice made by the person seeking the copy. Nothing in this 430
section requires a public office or person responsible for the 431
public record to allow the person seeking a copy of the public 432
record to make the copies of the public record. 433

(7) (a) Upon a request made in accordance with division (B) 434
of this section and subject to division (B) (6) of this section, 435
a public office or person responsible for public records shall 436
transmit a copy of a public record to any person by United 437
States mail or by any other means of delivery or transmission 438
within a reasonable period of time after receiving the request 439
for the copy. The public office or person responsible for the 440
public record may require the person making the request to pay 441
in advance the cost of postage if the copy is transmitted by 442
United States mail or the cost of delivery if the copy is 443
transmitted other than by United States mail, and to pay in 444
advance the costs incurred for other supplies used in the 445
mailing, delivery, or transmission. 446

(b) Any public office may adopt a policy and procedures 447
that it will follow in transmitting, within a reasonable period 448
of time after receiving a request, copies of public records by 449
United States mail or by any other means of delivery or 450
transmission pursuant to division (B) (7) of this section. A 451
public office that adopts a policy and procedures under division 452
(B) (7) of this section shall comply with them in performing its 453
duties under that division. 454

(c) In any policy and procedures adopted under division 455
(B) (7) of this section: 456

(i) A public office may limit the number of records 457
requested by a person that the office will physically deliver by 458
United States mail or by another delivery service to ten per 459
month, unless the person certifies to the office in writing that 460
the person does not intend to use or forward the requested 461
records, or the information contained in them, for commercial 462
purposes; 463

(ii) A public office that chooses to provide some or all 464
of its public records on a web site that is fully accessible to 465
and searchable by members of the public at all times, other than 466
during acts of God outside the public office's control or 467
maintenance, and that charges no fee to search, access, 468
download, or otherwise receive records provided on the web site, 469
may limit to ten per month the number of records requested by a 470
person that the office will deliver in a digital format, unless 471
the requested records are not provided on the web site and 472
unless the person certifies to the office in writing that the 473
person does not intend to use or forward the requested records, 474
or the information contained in them, for commercial purposes. 475

(iii) For purposes of division (B)(7) of this section, 476
"commercial" shall be narrowly construed and does not include 477
reporting or gathering news, reporting or gathering information 478
to assist citizen oversight or understanding of the operation or 479
activities of government, or nonprofit educational research. 480

(8) A public office or person responsible for public 481
records is not required to permit a person who is incarcerated 482
pursuant to a criminal conviction or a juvenile adjudication to 483
inspect or to obtain a copy of any public record concerning a 484
criminal investigation or prosecution or concerning what would 485
be a criminal investigation or prosecution if the subject of the 486

investigation or prosecution were an adult, unless the request 487
to inspect or to obtain a copy of the record is for the purpose 488
of acquiring information that is subject to release as a public 489
record under this section and the judge who imposed the sentence 490
or made the adjudication with respect to the person, or the 491
judge's successor in office, finds that the information sought 492
in the public record is necessary to support what appears to be 493
a justiciable claim of the person. 494

(9) (a) Upon written request made and signed by a 495
journalist on or after December 16, 1999, a public office, or 496
person responsible for public records, having custody of the 497
records of the agency employing a specified peace officer, 498
parole officer, probation officer, bailiff, prosecuting 499
attorney, assistant prosecuting attorney, correctional employee, 500
community-based correctional facility employee, youth services 501
employee, firefighter, EMT, investigator of the bureau of 502
criminal identification and investigation, or federal law 503
enforcement officer shall disclose to the journalist the address 504
of the actual personal residence of the peace officer, parole 505
officer, probation officer, bailiff, prosecuting attorney, 506
assistant prosecuting attorney, correctional employee, 507
community-based correctional facility employee, youth services 508
employee, firefighter, EMT, investigator of the bureau of 509
criminal identification and investigation, or federal law 510
enforcement officer and, if the peace officer's, parole 511
officer's, probation officer's, bailiff's, prosecuting 512
attorney's, assistant prosecuting attorney's, correctional 513
employee's, community-based correctional facility employee's, 514
youth services employee's, firefighter's, EMT's, investigator of 515
the bureau of criminal identification and investigation's, or 516
federal law enforcement officer's spouse, former spouse, or 517

child is employed by a public office, the name and address of 518
the employer of the peace officer's, parole officer's, probation 519
officer's, bailiff's, prosecuting attorney's, assistant 520
prosecuting attorney's, correctional employee's, community-based 521
correctional facility employee's, youth services employee's, 522
firefighter's, EMT's, investigator of the bureau of criminal 523
identification and investigation's, or federal law enforcement 524
officer's spouse, former spouse, or child. The request shall 525
include the journalist's name and title and the name and address 526
of the journalist's employer and shall state that disclosure of 527
the information sought would be in the public interest. 528

(b) Division (B) (9) (a) of this section also applies to 529
journalist requests for customer information maintained by a 530
municipally owned or operated public utility, other than social 531
security numbers and any private financial information such as 532
credit reports, payment methods, credit card numbers, and bank 533
account information. 534

(c) As used in division (B) (9) of this section, 535
"journalist" means a person engaged in, connected with, or 536
employed by any news medium, including a newspaper, magazine, 537
press association, news agency, or wire service, a radio or 538
television station, or a similar medium, for the purpose of 539
gathering, processing, transmitting, compiling, editing, or 540
disseminating information for the general public. 541

(C) (1) If a person allegedly is aggrieved by the failure 542
of a public office or the person responsible for public records 543
to promptly prepare a public record and to make it available to 544
the person for inspection in accordance with division (B) of 545
this section or by any other failure of a public office or the 546
person responsible for public records to comply with an 547

obligation in accordance with division (B) of this section, the 548
person allegedly aggrieved may do only one of the following, and 549
not both: 550

(a) File a complaint with the clerk of the court of claims 551
or the clerk of the court of common pleas under section 2743.75 552
of the Revised Code; 553

(b) Commence a mandamus action to obtain a judgment that 554
orders the public office or the person responsible for the 555
public record to comply with division (B) of this section, that 556
awards court costs and reasonable attorney's fees to the person 557
that instituted the mandamus action, and, if applicable, that 558
includes an order fixing statutory damages under division (C) (2) 559
of this section. The mandamus action may be commenced in the 560
court of common pleas of the county in which division (B) of 561
this section allegedly was not complied with, in the supreme 562
court pursuant to its original jurisdiction under Section 2 of 563
Article IV, Ohio Constitution, or in the court of appeals for 564
the appellate district in which division (B) of this section 565
allegedly was not complied with pursuant to its original 566
jurisdiction under Section 3 of Article IV, Ohio Constitution. 567

(2) If a requester transmits a written request by hand 568
delivery or certified mail to inspect or receive copies of any 569
public record in a manner that fairly describes the public 570
record or class of public records to the public office or person 571
responsible for the requested public records, except as 572
otherwise provided in this section, the requester shall be 573
entitled to recover the amount of statutory damages set forth in 574
this division if a court determines that the public office or 575
the person responsible for public records failed to comply with 576
an obligation in accordance with division (B) of this section. 577

The amount of statutory damages shall be fixed at one 578
hundred dollars for each business day during which the public 579
office or person responsible for the requested public records 580
failed to comply with an obligation in accordance with division 581
(B) of this section, beginning with the day on which the 582
requester files a mandamus action to recover statutory damages, 583
up to a maximum of one thousand dollars. The award of statutory 584
damages shall not be construed as a penalty, but as compensation 585
for injury arising from lost use of the requested information. 586
The existence of this injury shall be conclusively presumed. The 587
award of statutory damages shall be in addition to all other 588
remedies authorized by this section. 589

The court may reduce an award of statutory damages or not 590
award statutory damages if the court determines both of the 591
following: 592

(a) That, based on the ordinary application of statutory 593
law and case law as it existed at the time of the conduct or 594
threatened conduct of the public office or person responsible 595
for the requested public records that allegedly constitutes a 596
failure to comply with an obligation in accordance with division 597
(B) of this section and that was the basis of the mandamus 598
action, a well-informed public office or person responsible for 599
the requested public records reasonably would believe that the 600
conduct or threatened conduct of the public office or person 601
responsible for the requested public records did not constitute 602
a failure to comply with an obligation in accordance with 603
division (B) of this section; 604

(b) That a well-informed public office or person 605
responsible for the requested public records reasonably would 606
believe that the conduct or threatened conduct of the public 607

office or person responsible for the requested public records 608
would serve the public policy that underlies the authority that 609
is asserted as permitting that conduct or threatened conduct. 610

(3) In a mandamus action filed under division (C) (1) of 611
this section, the following apply: 612

(a) (i) If the court orders the public office or the person 613
responsible for the public record to comply with division (B) of 614
this section, the court shall determine and award to the relator 615
all court costs, which shall be construed as remedial and not 616
punitive. 617

(ii) If the court makes a determination described in 618
division (C) (3) (b) (iii) of this section, the court shall 619
determine and award to the relator all court costs, which shall 620
be construed as remedial and not punitive. 621

(b) If the court renders a judgment that orders the public 622
office or the person responsible for the public record to comply 623
with division (B) of this section or if the court determines any 624
of the following, the court may award reasonable attorney's fees 625
to the relator, subject to the provisions of division (C) (4) of 626
this section: 627

(i) The public office or the person responsible for the 628
public records failed to respond affirmatively or negatively to 629
the public records request in accordance with the time allowed 630
under division (B) of this section. 631

(ii) The public office or the person responsible for the 632
public records promised to permit the relator to inspect or 633
receive copies of the public records requested within a 634
specified period of time but failed to fulfill that promise 635
within that specified period of time. 636

(iii) The public office or the person responsible for the public records acted in bad faith when the office or person voluntarily made the public records available to the relator for the first time after the relator commenced the mandamus action, but before the court issued any order concluding whether or not the public office or person was required to comply with division (B) of this section. No discovery may be conducted on the issue of the alleged bad faith of the public office or person responsible for the public records. This division shall not be construed as creating a presumption that the public office or the person responsible for the public records acted in bad faith when the office or person voluntarily made the public records available to the relator for the first time after the relator commenced the mandamus action, but before the court issued any order described in this division.

(c) The court shall 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 667
believe that the conduct or threatened conduct of the public 668
office or person responsible for the requested public records 669
would serve the public policy that underlies the authority that 670
is asserted as permitting that conduct or threatened conduct. 671

(4) All of the following apply to any award of reasonable 672
attorney's fees awarded under division (C) (3) (b) of this 673
section: 674

(a) The fees shall be construed as remedial and not 675
punitive. 676

(b) The fees awarded shall not exceed the total of the 677
reasonable attorney's fees incurred before the public record was 678
made available to the relator and the fees described in division 679
(C) (4) (c) of this section. 680

(c) Reasonable attorney's fees shall include reasonable 681
fees incurred to produce proof of the reasonableness and amount 682
of the fees and to otherwise litigate entitlement to the fees. 683

(d) The court may reduce the amount of fees awarded if the 684
court determines that, given the factual circumstances involved 685
with the specific public records request, an alternative means 686
should have been pursued to more effectively and efficiently 687
resolve the dispute that was subject to the mandamus action 688
filed under division (C) (1) of this section. 689

(5) If the court does not issue a writ of mandamus under 690
division (C) of this section and the court determines at that 691
time that the bringing of the mandamus action was frivolous 692
conduct as defined in division (A) of section 2323.51 of the 693
Revised Code, the court may award to the public office all court 694
costs, expenses, and reasonable attorney's fees, as determined 695

by the court. 696

(D) Chapter 1347. of the Revised Code does not limit the 697
provisions of this section. 698

(E) (1) To ensure that all employees of public offices are 699
appropriately educated about a public office's obligations under 700
division (B) of this section, all elected officials or their 701
appropriate designees shall attend training approved by the 702
attorney general as provided in section 109.43 of the Revised 703
Code. In addition, all public offices shall adopt a public 704
records policy in compliance with this section for responding to 705
public records requests. In adopting a public records policy 706
under this division, a public office may obtain guidance from 707
the model public records policy developed and provided to the 708
public office by the attorney general under section 109.43 of 709
the Revised Code. Except as otherwise provided in this section, 710
the policy may not limit the number of public records that the 711
public office will make available to a single person, may not 712
limit the number of public records that it will make available 713
during a fixed period of time, and may not establish a fixed 714
period of time before it will respond to a request for 715
inspection or copying of public records, unless that period is 716
less than eight hours. 717

(2) The public office shall distribute the public records 718
policy adopted by the public office under division (E) (1) of 719
this section to the employee of the public office who is the 720
records custodian or records manager or otherwise has custody of 721
the records of that office. The public office shall require that 722
employee to acknowledge receipt of the copy of the public 723
records policy. The public office shall create a poster that 724
describes its public records policy and shall post the poster in 725

a conspicuous place in the public office and in all locations 726
where the public office has branch offices. The public office 727
may post its public records policy on the internet web site of 728
the public office if the public office maintains an internet web 729
site. A public office that has established a manual or handbook 730
of its general policies and procedures for all employees of the 731
public office shall include the public records policy of the 732
public office in the manual or handbook. 733

(F) (1) The bureau of motor vehicles may adopt rules 734
pursuant to Chapter 119. of the Revised Code to reasonably limit 735
the number of bulk commercial special extraction requests made 736
by a person for the same records or for updated records during a 737
calendar year. The rules may include provisions for charges to 738
be made for bulk commercial special extraction requests for the 739
actual cost of the bureau, plus special extraction costs, plus 740
ten per cent. The bureau may charge for expenses for redacting 741
information, the release of which is prohibited by law. 742

(2) As used in division (F) (1) of this section: 743

(a) "Actual cost" means the cost of depleted supplies, 744
records storage media costs, actual mailing and alternative 745
delivery costs, or other transmitting costs, and any direct 746
equipment operating and maintenance costs, including actual 747
costs paid to private contractors for copying services. 748

(b) "Bulk commercial special extraction request" means a 749
request for copies of a record for information in a format other 750
than the format already available, or information that cannot be 751
extracted without examination of all items in a records series, 752
class of records, or database by a person who intends to use or 753
forward the copies for surveys, marketing, solicitation, or 754
resale for commercial purposes. "Bulk commercial special 755

extraction request" does not include a request by a person who 756
gives assurance to the bureau that the person making the request 757
does not intend to use or forward the requested copies for 758
surveys, marketing, solicitation, or resale for commercial 759
purposes. 760

(c) "Commercial" means profit-seeking production, buying, 761
or selling of any good, service, or other product. 762

(d) "Special extraction costs" means the cost of the time 763
spent by the lowest paid employee competent to perform the task, 764
the actual amount paid to outside private contractors employed 765
by the bureau, or the actual cost incurred to create computer 766
programs to make the special extraction. "Special extraction 767
costs" include any charges paid to a public agency for computer 768
or records services. 769

(3) For purposes of divisions (F)(1) and (2) of this 770
section, "surveys, marketing, solicitation, or resale for 771
commercial purposes" shall be narrowly construed and does not 772
include reporting or gathering news, reporting or gathering 773
information to assist citizen oversight or understanding of the 774
operation or activities of government, or nonprofit educational 775
research. 776

(G) A request by a defendant, counsel of a defendant, or 777
any agent of a defendant in a criminal action that public 778
records related to that action be made available under this 779
section shall be considered a demand for discovery pursuant to 780
the Criminal Rules, except to the extent that the Criminal Rules 781
plainly indicate a contrary intent. The defendant, counsel of 782
the defendant, or agent of the defendant making a request under 783
this division shall serve a copy of the request on the 784
prosecuting attorney, director of law, or other chief legal 785

officer responsible for prosecuting the action. 786

Section 2. That existing section 149.43 of the Revised 787
Code is hereby repealed. 788