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Representatives Perales, Keller

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

A BILL

To amend section 149.43 of the Revised Code to
eliminate the public disclosure exemption for
any permanently retained record 100 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;

| | |
|--|----|
| (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 or by the law under which a public office functions; 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 one hundred 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, or a denial of release 142
form filed pursuant to section 3107.46 of the Revised Code. If 143
the record is a birth certificate and a biological parent's name 144
redaction request form has been accepted under section 3107.391 145
of the Revised Code, the name of that parent shall be redacted 146
from the birth certificate before it is released under this 147
paragraph. If any other section of the Revised Code establishes 148
a time period for disclosure of a record that conflicts with the 149
time period specified in this section, the time period in the 150
other section prevails. 151

(2) "Confidential law enforcement investigatory record" 152
means any record that pertains to a law enforcement matter of a 153
criminal, quasi-criminal, civil, or administrative nature, but 154
only to the extent that the release of the record would create a 155
high probability of disclosure of any of the following: 156

(a) The identity of a suspect who has not been charged 157
with the offense to which the record pertains, or of an 158
information source or witness to whom confidentiality has been 159
reasonably promised; 160

(b) Information provided by an information source or 161
witness to whom confidentiality has been reasonably promised, 162
which information would reasonably tend to disclose the source's 163
or witness's identity; 164

(c) Specific confidential investigatory techniques or 165
procedures or specific investigatory work product; 166

(d) Information that would endanger the life or physical 167
safety of law enforcement personnel, a crime victim, a witness, 168
or a confidential information source. 169

(3) "Medical record" means any document or combination of 170
documents, except births, deaths, and the fact of admission to 171
or discharge from a hospital, that pertains to the medical 172
history, diagnosis, prognosis, or medical condition of a patient 173
and that is generated and maintained in the process of medical 174
treatment. 175

(4) "Trial preparation record" means any record that 176
contains information that is specifically compiled in reasonable 177
anticipation of, or in defense of, a civil or criminal action or 178
proceeding, including the independent thought processes and 179
personal trial preparation of an attorney. 180

(5) "Intellectual property record" means a record, other 181
than a financial or administrative record, that is produced or 182
collected by or for faculty or staff of a state institution of 183
higher learning in the conduct of or as a result of study or 184
research on an educational, commercial, scientific, artistic, 185
technical, or scholarly issue, regardless of whether the study 186
or research was sponsored by the institution alone or in 187
conjunction with a governmental body or private concern, and 188
that has not been publicly released, published, or patented. 189

(6) "Donor profile record" means all records about donors 190
or potential donors to a public institution of higher education 191
except the names and reported addresses of the actual donors and 192
the date, amount, and conditions of the actual donation. 193

(7) "Peace officer, parole officer, probation officer, 194
bailiff, prosecuting attorney, assistant prosecuting attorney, 195
correctional employee, community-based correctional facility 196
employee, youth services employee, firefighter, EMT, 197
investigator of the bureau of criminal identification and 198
investigation, or federal law enforcement officer residential 199
and familial information" means any information that discloses 200
any of the following about a peace officer, parole officer, 201
probation officer, bailiff, prosecuting attorney, assistant 202
prosecuting attorney, correctional employee, community-based 203
correctional facility employee, youth services employee, 204
firefighter, EMT, investigator of the bureau of criminal 205
identification and investigation, or federal law enforcement 206
officer: 207

(a) The address of the actual personal residence of a 208
peace officer, parole officer, probation officer, bailiff, 209
assistant prosecuting attorney, correctional employee, 210
community-based correctional facility employee, youth services 211
employee, firefighter, EMT, an investigator of the bureau of 212
criminal identification and investigation, or federal law 213
enforcement officer, except for the state or political 214
subdivision in which the peace officer, parole officer, 215
probation officer, bailiff, assistant prosecuting attorney, 216
correctional employee, community-based correctional facility 217
employee, youth services employee, firefighter, EMT, 218
investigator of the bureau of criminal identification and 219
investigation, or federal law enforcement officer resides; 220

(b) Information compiled from referral to or participation 221
in an employee assistance program; 222

(c) The social security number, the residential telephone 223
number, any bank account, debit card, charge card, or credit 224
card number, or the emergency telephone number of, or any 225
medical information pertaining to, a peace officer, parole 226
officer, probation officer, bailiff, prosecuting attorney, 227
assistant prosecuting attorney, correctional employee, 228
community-based correctional facility employee, youth services 229
employee, firefighter, EMT, investigator of the bureau of 230
criminal identification and investigation, or federal law 231
enforcement officer; 232

(d) The name of any beneficiary of employment benefits, 233
including, but not limited to, life insurance benefits, provided 234
to a peace officer, parole officer, probation officer, bailiff, 235
prosecuting attorney, assistant prosecuting attorney, 236
correctional employee, community-based correctional facility 237
employee, youth services employee, firefighter, EMT, 238
investigator of the bureau of criminal identification and 239
investigation, or federal law enforcement officer by the peace 240
officer's, parole officer's, probation officer's, bailiff's, 241
prosecuting attorney's, assistant prosecuting attorney's, 242
correctional employee's, community-based correctional facility 243
employee's, youth services employee's, firefighter's, EMT's, 244
investigator of the bureau of criminal identification and 245
investigation's, or federal law enforcement officer's employer; 246

(e) The identity and amount of any charitable or 247
employment benefit deduction made by the peace officer's, parole 248
officer's, probation officer's, bailiff's, prosecuting 249
attorney's, assistant prosecuting attorney's, correctional 250

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

(f) The name, the residential address, the name of the 263
employer, the address of the employer, the social security 264
number, the residential telephone number, any bank account, 265
debit card, charge card, or credit card number, or the emergency 266
telephone number of the spouse, a former spouse, or any child of 267
a peace officer, parole officer, probation officer, bailiff, 268
prosecuting attorney, assistant prosecuting attorney, 269
correctional employee, community-based correctional facility 270
employee, youth services employee, firefighter, EMT, 271
investigator of the bureau of criminal identification and 272
investigation, or federal law enforcement officer; 273

(g) A photograph of a peace officer who holds a position 274
or has an assignment that may include undercover or plain 275
clothes positions or assignments as determined by the peace 276
officer's appointing authority. 277

(8) As used in divisions (A) (7) and (B) (9) of this 278
section, ~~"peace~~ : 279

"Peace officer" has the same meaning as in section 109.71 280

of the Revised Code and also includes the superintendent and 281
troopers of the state highway patrol; it does not include the 282
sheriff of a county or a supervisory employee who, in the 283
absence of the sheriff, is authorized to stand in for, exercise 284
the authority of, and perform the duties of the sheriff. 285

~~As used in divisions (A) (7) and (B) (9) of this section,~~ 286
~~"correctional"~~ "Correctional" employee" means any employee of the 287
department of rehabilitation and correction who in the course of 288
performing the employee's job duties has or has had contact with 289
inmates and persons under supervision. 290

~~As used in divisions (A) (7) and (B) (9) of this section,~~ 291
~~"youth"~~ "Youth" services employee" means any employee of the 292
department of youth services who in the course of performing the 293
employee's job duties has or has had contact with children 294
committed to the custody of the department of youth services. 295

~~As used in divisions (A) (7) and (B) (9) of this section,~~ 296
~~"firefighter"~~ "Firefighter" means any regular, paid or 297
volunteer, member of a lawfully constituted fire department of a 298
municipal corporation, township, fire district, or village. 299

~~As used in divisions (A) (7) and (B) (9) of this section,~~ 300
"EMT" means EMTs-basic, EMTs-I, and paramedics that provide 301
emergency medical services for a public emergency medical 302
service organization. "Emergency medical service organization," 303
"EMT-basic," "EMT-I," and "paramedic" have the same meanings as 304
in section 4765.01 of the Revised Code. 305

~~As used in divisions (A) (7) and (B) (9) of this section,~~ 306
~~"investigator"~~ "Investigator" of the bureau of criminal 307
identification and investigation" has the meaning defined in 308
section 2903.11 of the Revised Code. 309

~~As used in divisions (A) (7) and (B) (9) of this section,~~ 310
~~"federal"~~ "Federal law enforcement officer" has the meaning 311
defined in section 9.88 of the Revised Code. 312

~~(8)~~ (9) "Information pertaining to the recreational 313
activities of a person under the age of eighteen" means 314
information that is kept in the ordinary course of business by a 315
public office, that pertains to the recreational activities of a 316
person under the age of eighteen years, and that discloses any 317
of the following: 318

(a) The address or telephone number of a person under the 319
age of eighteen or the address or telephone number of that 320
person's parent, guardian, custodian, or emergency contact 321
person; 322

(b) The social security number, birth date, or 323
photographic image of a person under the age of eighteen; 324

(c) Any medical record, history, or information pertaining 325
to a person under the age of eighteen; 326

(d) Any additional information sought or required about a 327
person under the age of eighteen for the purpose of allowing 328
that person to participate in any recreational activity 329
conducted or sponsored by a public office or to use or obtain 330
admission privileges to any recreational facility owned or 331
operated by a public office. 332

~~(9)~~ (10) "Community control sanction" has the same meaning 333
as in section 2929.01 of the Revised Code. 334

~~(10)~~ (11) "Post-release control sanction" has the same 335
meaning as in section 2967.01 of the Revised Code. 336

~~(11)~~ (12) "Redaction" means obscuring or deleting any 337

information that is exempt from the duty to permit public 338
inspection or copying from an item that otherwise meets the 339
definition of a "record" in section 149.011 of the Revised Code. 340

~~(12)~~ (13) "Designee" and "elected official" have the same 341
meanings as in section 109.43 of the Revised Code. 342

(B) (1) Upon request and subject to division (B) (8) of this 343
section, all public records responsive to the request shall be 344
promptly prepared and made available for inspection to any 345
person at all reasonable times during regular business hours. 346
Subject to division (B) (8) of this section, upon request, a 347
public office or person responsible for public records shall 348
make copies of the requested public record available at cost and 349
within a reasonable period of time. If a public record contains 350
information that is exempt from the duty to permit public 351
inspection or to copy the public record, the public office or 352
the person responsible for the public record shall make 353
available all of the information within the public record that 354
is not exempt. When making that public record available for 355
public inspection or copying that public record, the public 356
office or the person responsible for the public record shall 357
notify the requester of any redaction or make the redaction 358
plainly visible. A redaction shall be deemed a denial of a 359
request to inspect or copy the redacted information, except if 360
federal or state law authorizes or requires a public office to 361
make the redaction. 362

(2) To facilitate broader access to public records, a 363
public office or the person responsible for public records shall 364
organize and maintain public records in a manner that they can 365
be made available for inspection or copying in accordance with 366
division (B) of this section. A public office also shall have 367

available a copy of its current records retention schedule at a 368
location readily available to the public. If a requester makes 369
an ambiguous or overly broad request or has difficulty in making 370
a request for copies or inspection of public records under this 371
section such that the public office or the person responsible 372
for the requested public record cannot reasonably identify what 373
public records are being requested, the public office or the 374
person responsible for the requested public record may deny the 375
request but shall provide the requester with an opportunity to 376
revise the request by informing the requester of the manner in 377
which records are maintained by the public office and accessed 378
in the ordinary course of the public office's or person's 379
duties. 380

(3) If a request is ultimately denied, in part or in 381
whole, the public office or the person responsible for the 382
requested public record shall provide the requester with an 383
explanation, including legal authority, setting forth why the 384
request was denied. If the initial request was provided in 385
writing, the explanation also shall be provided to the requester 386
in writing. The explanation shall not preclude the public office 387
or the person responsible for the requested public record from 388
relying upon additional reasons or legal authority in defending 389
an action commenced under division (C) of this section. 390

(4) Unless specifically required or authorized by state or 391
federal law or in accordance with division (B) of this section, 392
no public office or person responsible for public records may 393
limit or condition the availability of public records by 394
requiring disclosure of the requester's identity or the intended 395
use of the requested public record. Any requirement that the 396
requester disclose the requester's identity or the intended use 397
of the requested public record constitutes a denial of the 398

request. 399

(5) A public office or person responsible for public 400
records may ask a requester to make the request in writing, may 401
ask for the requester's identity, and may inquire about the 402
intended use of the information requested, but may do so only 403
after disclosing to the requester that a written request is not 404
mandatory ~~and~~, that the requester may decline to reveal the 405
requester's identity or the intended use, and when a written 406
request or disclosure of the identity or intended use would 407
benefit the requester by enhancing the ability of the public 408
office or person responsible for public records to identify, 409
locate, or deliver the public records sought by the requester. 410

(6) If any person ~~chooses to obtain~~ requests a copy of a 411
public record in accordance with division (B) of this section, 412
the public office or person responsible for the public record 413
may require that person to pay in advance the cost involved in 414
providing the copy of the public record in accordance with the 415
choice made by the person seeking the copy under this division. 416
The public office or the person responsible for the public 417
record shall permit that person to choose to have the public 418
record duplicated upon paper, upon the same medium upon which 419
the public office or person responsible for the public record 420
keeps it, or upon any other medium upon which the public office 421
or person responsible for the public record determines that it 422
reasonably can be duplicated as an integral part of the normal 423
operations of the public office or person responsible for the 424
public record. When the person seeking the copy makes a choice 425
under this division, the public office or person responsible for 426
the public record shall provide a copy of it in accordance with 427
the choice made by the person seeking the copy. Nothing in this 428
section requires a public office or person responsible for the 429

public record to allow the person seeking a copy of the public 430
record to make the copies of the public record. 431

(7) (a) Upon a request made in accordance with division (B) 432
of this section and subject to division (B) (6) of this section, 433
a public office or person responsible for public records shall 434
transmit a copy of a public record to any person by United 435
States mail or by any other means of delivery or transmission 436
within a reasonable period of time after receiving the request 437
for the copy. The public office or person responsible for the 438
public record may require the person making the request to pay 439
in advance the cost of postage if the copy is transmitted by 440
United States mail or the cost of delivery if the copy is 441
transmitted other than by United States mail, and to pay in 442
advance the costs incurred for other supplies used in the 443
mailing, delivery, or transmission. 444

(b) Any public office may adopt a policy and procedures 445
that it will follow in transmitting, within a reasonable period 446
of time after receiving a request, copies of public records by 447
United States mail or by any other means of delivery or 448
transmission pursuant to division (B) (7) of this section. A 449
public office that adopts a policy and procedures under division 450
(B) (7) of this section shall comply with them in performing its 451
duties under that division. 452

(c) In any policy and procedures adopted under division 453
(B) (7) of this section: 454

(i) A public office may limit the number of records 455
requested by a person that the office will physically deliver by 456
United States mail or by another delivery service to ten per 457
month, unless the person certifies to the office in writing that 458
the person does not intend to use or forward the requested 459

records, or the information contained in them, for commercial 460
purposes; 461

(ii) A public office that chooses to provide some or all 462
of its public records on a web site that is fully accessible to 463
and searchable by members of the public at all times, other than 464
during acts of God outside the public office's control or 465
maintenance, and that charges no fee to search, access, 466
download, or otherwise receive records provided on the web site, 467
may limit to ten per month the number of records requested by a 468
person that the office will deliver in a digital format, unless 469
the requested records are not provided on the web site and 470
unless the person certifies to the office in writing that the 471
person does not intend to use or forward the requested records, 472
or the information contained in them, for commercial purposes. 473

(iii) For purposes of division (B)(7) of this section, 474
"commercial" shall be narrowly construed and does not include 475
reporting or gathering news, reporting or gathering information 476
to assist citizen oversight or understanding of the operation or 477
activities of government, or nonprofit educational research. 478

(8) A public office or person responsible for public 479
records is not required to permit a person who is incarcerated 480
pursuant to a criminal conviction or a juvenile adjudication to 481
inspect or to obtain a copy of any public record concerning a 482
criminal investigation or prosecution or concerning what would 483
be a criminal investigation or prosecution if the subject of the 484
investigation or prosecution were an adult, unless the request 485
to inspect or to obtain a copy of the record is for the purpose 486
of acquiring information that is subject to release as a public 487
record under this section and the judge who imposed the sentence 488
or made the adjudication with respect to the person, or the 489

judge's successor in office, finds that the information sought 490
in the public record is necessary to support what appears to be 491
a justiciable claim of the person. 492

(9) (a) Upon written request made and signed by a 493
journalist on or after December 16, 1999, a public office, or 494
person responsible for public records, having custody of the 495
records of the agency employing a specified peace officer, 496
parole officer, probation officer, bailiff, prosecuting 497
attorney, assistant prosecuting attorney, correctional employee, 498
community-based correctional facility employee, youth services 499
employee, firefighter, EMT, investigator of the bureau of 500
criminal identification and investigation, or federal law 501
enforcement officer shall disclose to the journalist the address 502
of the actual personal residence of the peace officer, parole 503
officer, probation officer, bailiff, prosecuting attorney, 504
assistant prosecuting attorney, correctional employee, 505
community-based correctional facility employee, youth services 506
employee, firefighter, EMT, investigator of the bureau of 507
criminal identification and investigation, or federal law 508
enforcement officer and, if the peace officer's, parole 509
officer's, probation officer's, bailiff's, prosecuting 510
attorney's, assistant prosecuting attorney's, correctional 511
employee's, community-based correctional facility employee's, 512
youth services employee's, firefighter's, EMT's, investigator of 513
the bureau of criminal identification and investigation's, or 514
federal law enforcement officer's spouse, former spouse, or 515
child is employed by a public office, the name and address of 516
the employer of the peace officer's, parole officer's, probation 517
officer's, bailiff's, prosecuting attorney's, assistant 518
prosecuting attorney's, correctional employee's, community-based 519
correctional facility employee's, youth services employee's, 520

firefighter's, EMT's, investigator of the bureau of criminal 521
identification and investigation's, or federal law enforcement 522
officer's spouse, former spouse, or child. The request shall 523
include the journalist's name and title and the name and address 524
of the journalist's employer and shall state that disclosure of 525
the information sought would be in the public interest. 526

(b) Division (B) (9) (a) of this section also applies to 527
journalist requests for customer information maintained by a 528
municipally owned or operated public utility, other than social 529
security numbers and any private financial information such as 530
credit reports, payment methods, credit card numbers, and bank 531
account information. 532

(c) As used in division (B) (9) of this section, 533
"journalist" means a person engaged in, connected with, or 534
employed by any news medium, including a newspaper, magazine, 535
press association, news agency, or wire service, a radio or 536
television station, or a similar medium, for the purpose of 537
gathering, processing, transmitting, compiling, editing, or 538
disseminating information for the general public. 539

(C) (1) If a person allegedly is aggrieved by the failure 540
of a public office or the person responsible for public records 541
to promptly prepare a public record and to make it available to 542
the person for inspection in accordance with division (B) of 543
this section or by any other failure of a public office or the 544
person responsible for public records to comply with an 545
obligation in accordance with division (B) of this section, the 546
person allegedly aggrieved may do only one of the following, and 547
not both: 548

(a) File a complaint with the clerk of the court of claims 549
or the clerk of the court of common pleas under section 2743.75 550

of the Revised Code; 551

(b) Commence a mandamus action to obtain a judgment that 552
orders the public office or the person responsible for the 553
public record to comply with division (B) of this section, that 554
awards court costs and reasonable attorney's fees to the person 555
that instituted the mandamus action, and, if applicable, that 556
includes an order fixing statutory damages under division (C) (2) 557
of this section. The mandamus action may be commenced in the 558
court of common pleas of the county in which division (B) of 559
this section allegedly was not complied with, in the supreme 560
court pursuant to its original jurisdiction under Section 2 of 561
Article IV, Ohio Constitution, or in the court of appeals for 562
the appellate district in which division (B) of this section 563
allegedly was not complied with pursuant to its original 564
jurisdiction under Section 3 of Article IV, Ohio Constitution. 565

(2) If a requester transmits a written request by hand 566
delivery or certified mail to inspect or receive copies of any 567
public record in a manner that fairly describes the public 568
record or class of public records to the public office or person 569
responsible for the requested public records, except as 570
otherwise provided in this section, the requester shall be 571
entitled to recover the amount of statutory damages set forth in 572
this division if a court determines that the public office or 573
the person responsible for public records failed to comply with 574
an obligation in accordance with division (B) of this section. 575

The amount of statutory damages shall be fixed at one 576
hundred dollars for each business day during which the public 577
office or person responsible for the requested public records 578
failed to comply with an obligation in accordance with division 579
(B) of this section, beginning with the day on which the 580

requester files a mandamus action to recover statutory damages, 581
up to a maximum of one thousand dollars. The award of statutory 582
damages shall not be construed as a penalty, but as compensation 583
for injury arising from lost use of the requested information. 584
The existence of this injury shall be conclusively presumed. The 585
award of statutory damages shall be in addition to all other 586
remedies authorized by this section. 587

The court may reduce an award of statutory damages or not 588
award statutory damages if the court determines both of the 589
following: 590

(a) That, based on the ordinary application of statutory 591
law and case law as it existed at the time of the conduct or 592
threatened conduct of the public office or person responsible 593
for the requested public records that allegedly constitutes a 594
failure to comply with an obligation in accordance with division 595
(B) of this section and that was the basis of the mandamus 596
action, a well-informed public office or person responsible for 597
the requested public records reasonably would believe that the 598
conduct or threatened conduct of the public office or person 599
responsible for the requested public records did not constitute 600
a failure to comply with an obligation in accordance with 601
division (B) of this section; 602

(b) That a well-informed public office or person 603
responsible for the requested public records reasonably would 604
believe that the conduct or threatened conduct of the public 605
office or person responsible for the requested public records 606
would serve the public policy that underlies the authority that 607
is asserted as permitting that conduct or threatened conduct. 608

(3) In a mandamus action filed under division (C)(1) of 609
this section, the following apply: 610

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

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

(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 or if the court determines any of the following, the court may award reasonable attorney's fees to the relator, subject to the provisions of division (C) (4) of this section:

(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.

(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 640
(B) of this section. No discovery may be conducted on the issue 641
of the alleged bad faith of the public office or person 642
responsible for the public records. This division shall not be 643
construed as creating a presumption that the public office or 644
the person responsible for the public records acted in bad faith 645
when the office or person voluntarily made the public records 646
available to the relator for the first time after the relator 647
commenced the mandamus action, but before the court issued any 648
order described in this division. 649

(c) The court shall not award attorney's fees to the 650
relator if the court determines both of the following: 651

(i) That, based on the ordinary application of statutory 652
law and case law as it existed at the time of the conduct or 653
threatened conduct of the public office or person responsible 654
for the requested public records that allegedly constitutes a 655
failure to comply with an obligation in accordance with division 656
(B) of this section and that was the basis of the mandamus 657
action, a well-informed public office or person responsible for 658
the requested public records reasonably would believe that the 659
conduct or threatened conduct of the public office or person 660
responsible for the requested public records did not constitute 661
a failure to comply with an obligation in accordance with 662
division (B) of this section; 663

(ii) That a well-informed public office or person 664
responsible for the requested public records reasonably would 665
believe that the conduct or threatened conduct of the public 666
office or person responsible for the requested public records 667
would serve the public policy that underlies the authority that 668
is asserted as permitting that conduct or threatened conduct. 669

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

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

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

(c) 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.

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

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

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

(2) The public office shall distribute the public records 716
policy adopted by the public office under division (E)(1) of 717
this section to the employee of the public office who is the 718
records custodian or records manager or otherwise has custody of 719
the records of that office. The public office shall require that 720
employee to acknowledge receipt of the copy of the public 721
records policy. The public office shall create a poster that 722
describes its public records policy and shall post the poster in 723
a conspicuous place in the public office and in all locations 724
where the public office has branch offices. The public office 725
may post its public records policy on the internet web site of 726
the public office if the public office maintains an internet web 727
site. A public office that has established a manual or handbook 728
of its general policies and procedures for all employees of the 729

public office shall include the public records policy of the 730
public office in the manual or handbook. 731

(F) (1) The bureau of motor vehicles may adopt rules 732
pursuant to Chapter 119. of the Revised Code to reasonably limit 733
the number of bulk commercial special extraction requests made 734
by a person for the same records or for updated records during a 735
calendar year. The rules may include provisions for charges to 736
be made for bulk commercial special extraction requests for the 737
actual cost of the bureau, plus special extraction costs, plus 738
ten per cent. The bureau may charge for expenses for redacting 739
information, the release of which is prohibited by law. 740

(2) As used in division (F) (1) of this section: 741

(a) "Actual cost" means the cost of depleted supplies, 742
records storage media costs, actual mailing and alternative 743
delivery costs, or other transmitting costs, and any direct 744
equipment operating and maintenance costs, including actual 745
costs paid to private contractors for copying services. 746

(b) "Bulk commercial special extraction request" means a 747
request for copies of a record for information in a format other 748
than the format already available, or information that cannot be 749
extracted without examination of all items in a records series, 750
class of records, or database by a person who intends to use or 751
forward the copies for surveys, marketing, solicitation, or 752
resale for commercial purposes. "Bulk commercial special 753
extraction request" does not include a request by a person who 754
gives assurance to the bureau that the person making the request 755
does not intend to use or forward the requested copies for 756
surveys, marketing, solicitation, or resale for commercial 757
purposes. 758

(c) "Commercial" means profit-seeking production, buying, 759
or selling of any good, service, or other product. 760

(d) "Special extraction costs" means the cost of the time 761
spent by the lowest paid employee competent to perform the task, 762
the actual amount paid to outside private contractors employed 763
by the bureau, or the actual cost incurred to create computer 764
programs to make the special extraction. "Special extraction 765
costs" include any charges paid to a public agency for computer 766
or records services. 767

(3) For purposes of divisions (F)(1) and (2) of this 768
section, "surveys, marketing, solicitation, or resale for 769
commercial purposes" shall be narrowly construed and does not 770
include reporting or gathering news, reporting or gathering 771
information to assist citizen oversight or understanding of the 772
operation or activities of government, or nonprofit educational 773
research. 774

(G) A request by a defendant, counsel of a defendant, or 775
any agent of a defendant in a criminal action that public 776
records related to that action be made available under this 777
section shall be considered a demand for discovery pursuant to 778
the Criminal Rules, except to the extent that the Criminal Rules 779
plainly indicate a contrary intent. The defendant, counsel of 780
the defendant, or agent of the defendant making a request under 781
this division shall serve a copy of the request on the 782
prosecuting attorney, director of law, or other chief legal 783
officer responsible for prosecuting the action. 784

Section 2. That existing section 149.43 of the Revised 785
Code is hereby repealed. 786