



# OHIO LEGISLATIVE SERVICE COMMISSION

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## Bill Analysis

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### **Sub. H.B. 139**

132nd General Assembly

(As Reported by S. Government Oversight and Reform)

**Reps.** Perales and Keller, Hambley, Fedor, Seitz, Dean, Antonio, Brenner, Craig, Cupp, Green, Greenspan, Lang, Retherford, Riedel, Young

**Sens.** Uecker, Coley, Skindell

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## **BILL SUMMARY**

- Eliminates the disclosure exemption for any permanently retained public record 75 years after the date of its creation, with certain exceptions.

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## **CONTENT AND OPERATION**

### **Time limitation on public record disclosure exemptions**

The Public Records Act requires that a public office promptly prepare a public record when requested and make it available to the requester for inspection at all reasonable times during regular business hours, or make copies of a requested public record available to the requester at cost and within a reasonable period of time. The Act contains an extensive list of categories of records kept by public offices that are **not** public records, meaning that the records are not subject to disclosure, including medical records, intellectual property records, and records the release of which is prohibited by state or federal law, to name a few.<sup>1</sup>

The bill specifies that a record that is not a public record because it is exempted by the Act, and that, under law, is permanently retained, becomes a public record on the day that is 75 years after the day on which the record was created, with exceptions identified below.<sup>2</sup> In other words, once an exempt record, except for those listed below, reaches the 75-year mark, the record is no longer exempt and must be disclosed to

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<sup>1</sup> R.C. 149.43(A)(1)(a) to (ff) and (B).

<sup>2</sup> R.C. 149.43(A)(1), after division (A)(1)(ff).

anyone who requests to inspect or obtain a copy of it. But if any other Revised Code statute establishes a time period for disclosure of a record that conflicts with the 75-year time period, the time period in the other statute prevails.

The bill also appears to apply to records that are confidential under other Ohio laws besides those exempt records listed in the Public Records Act.<sup>3</sup>

### **Exceptions**

The following are not subject to the bill's 75-year mark for disclosure:

(1) A record protected by the attorney-client privilege;

(2) A "trial preparation record";

(3) A statement prohibiting the release of identifying information signed by a biological parent under an adoption law;<sup>4</sup>

(4) A denial of release form that is signed by a birth parent and filed with the Department of Health under an adoption law;<sup>5</sup>

(5) Security and infrastructure records that are exempt from release or disclosure under continuing law.<sup>6</sup>

In addition, if the record is a birth certificate, and a biological parent's name redaction request form has been accepted by the Department of Health under continuing law<sup>7</sup> (and placed in an adoption file), the name of that parent must be redacted from the birth certificate before it is disclosed under the bill.

Under continuing law, a "trial preparation record" is any record that contains information that is specifically compiled in reasonable anticipation of, or in defense of, a civil or criminal action or proceeding, including the independent thought processes and personal trial preparation of an attorney.<sup>8</sup>

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<sup>3</sup> R.C. 149.43(A)(1)(v). However, the bill does not apply to records that are confidential under federal law.

<sup>4</sup> R.C. 3107.083, not in the bill.

<sup>5</sup> R.C. 3107.46, not in the bill.

<sup>6</sup> R.C. 149.433, not in the bill.

<sup>7</sup> R.C. 3107.391, not in the bill.

<sup>8</sup> R.C. 149.43(A)(4).



## Application of the Public Records Act

Under continuing law, the Public Records Act applies to all "public offices," meaning any state agency, public institution, political subdivision, or other organized body, office, agency, institution, or entity established by the laws of this state for the exercise of any function of government, except for the nonprofit corporation commonly known as JobsOhio.<sup>9</sup> A "record" includes any document, device, or item, regardless of physical form or characteristic, including an electronic record, created or received by or coming under the jurisdiction of any public office of the state or its political subdivisions, that serves to document the office's organization, functions, policies, decisions, procedures, operations, or other activities.<sup>10</sup> And a "public record" is a record kept by any public office, including state, county, city, village, township, and school district units, and records pertaining to the delivery of educational services by an alternative school in Ohio kept by the nonprofit or for-profit entity operating the alternative school.<sup>11</sup>

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## HISTORY

ACTION	DATE
Introduced	03-21-17
Reported, H. State & Local Gov't	03-21-18
Passed House (93-0)	06-20-18
Reported, S. Gov't Oversight & Reform	12-06-18

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<sup>9</sup> R.C. 149.011(A), not in the bill.

<sup>10</sup> R.C. 149.011(G), not in the bill.

<sup>11</sup> R.C. 149.43(A).

