



www.lsc.ohio.gov

OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research
and Drafting

Legislative Budget
Office

H.B. 265*
135th General Assembly

Bill Analysis

[Click here for H.B. 265's Fiscal Note](#)

Version: As Reported by Senate Judiciary

Primary Sponsors: Reps. Wiggam and Hall

Christopher Glass, Attorney

SUMMARY

- Establishes that each state agency is for all purposes to be considered in exclusive possession, custody, and control of its own records.
- Establishes that a state agency or public official is not to be considered a party to any litigation unless either the agency or official intervenes in the litigation or is named in the case caption in conjunction with a pleading specifying factual allegations against the agency or official giving rise to at least one justiciable claim.
- Requires a person allegedly aggrieved by a violation of the Public Records Law to transmit a complaint to the public office or person responsible for public records allegedly responsible for the violation before bringing a claim in court.
- Establishes a three-day period in which a public office or person responsible for public records may cure or address an alleged violation of the Public Records Law and prohibits a person allegedly aggrieved from filing an action in court under the Public Records Law before the expiration of the period.
- Makes statutory damages under the Public Records Law unavailable to certain incarcerated persons.
- Specifies the term “public record concerning a criminal investigation or prosecution concerning what would be a criminal investigation or prosecution if the subject of the investigation were an adult” includes certain files and records of a designated public service worker, making these records inaccessible to certain incarcerated individuals via public records request unless certain requirements are met.

* This analysis was prepared before the report of the Senate Judiciary Committee appeared in the Senate Journal. Note that the legislative history may be incomplete.

- Exempts the records, of the work schedules of designated public service workers, from disclosure under Public Records Law.
- Exempts redaction request forms from disclosure under Public Records Law.
- Exempts an affidavit submitted to a county auditor, by a designated public service worker, a qualifying former designated public service worker, or the spouse of either, requesting the county auditor to remove the name of the individual from certain publicly available documents, from disclosure under Public Records Law.
- Allows a qualifying former designated public service worker to request that a public office redact the former worker's address from any record made available to the general public on the internet, and to request that a county auditor remove the name of the individual from certain publicly available documents.
- Prohibits vexatious litigators from requesting public records without the leave of a court and a court order.
- Permits a public office or person responsible for public records to require identification from a public records requestor if the public office or person responsible for public records knows or has reasonable cause to believe that the requestor is a vexatious litigator.
- Clarifies that the contents of a presentence investigation report or part of a presentence investigation report may be shared between courts.

DETAILED ANALYSIS

Control of agency records

Under the bill, each state agency is to be considered for all purposes, including under the Public Records Law and in litigation, the custodian of its own records, and to be in exclusive possession, custody, and control of its records. The bill further specifies that the Attorney General is not in possession, custody, or control of state agency records, except its own records. The term "state agency" is defined broadly to encompass all bodies of state government, including the General Assembly, courts, and executive offices.¹

Status of state agencies and officials in litigation

The bill establishes that a state agency or public official is not to be considered a party to any litigation unless (1) the agency or official intervenes in the litigation, or (2) the agency or official are included in the case caption in conjunction with a pleading alleging factual allegations against the agency or official giving rise to at least one justiciable claim.²

¹ R.C. 9.59(A)(1) and (B).

² R.C. 9.59(C).

Public record lawsuits

Under continuing law, a person allegedly aggrieved by a violation of the Public Records Law may file a complaint in court or commence a mandamus action against the public office or person responsible for public records allegedly responsible for the violation. The bill adds an intermediate step in this process by requiring the aggrieved person to first transmit a complaint to the public office or person responsible for public records before bringing the claim to court. The public office or person responsible for public records then has three business days to cure or otherwise address the alleged violation. The aggrieved person may not file the claim in court before the expiration of the three-day period. Upon the expiration of the period, the aggrieved person may bring the claim to a court as under continuing law, but under the bill must additionally file with the court, in conjunction with the claim, a written affirmation that states:

1. The person properly transmitted the complaint to the public office or person responsible for public records;
2. The alleged violation was not cured or otherwise resolved to the person's satisfaction; and
3. The person transmitted the complaint to the public office or person responsible for public records at least three business days before the filing of the suit.

If the aggrieved person fails to file such affirmation, the suit must be dismissed.³

Statutory damages

Under continuing law, a person may recover statutory damages in connection with a lawsuit commenced under the Public Records Law. The bill makes statutory damages under the Public Records Law unavailable to persons committed to the custody of the Department of Rehabilitation and Correction or the U.S. Bureau of Prisons and to children committed to the Department of Youth Services.⁴

Criminal investigation records

Under continuing law, a public office or person responsible for public records is not required to permit a person who is incarcerated pursuant to a criminal conviction or a juvenile adjudication to inspect or obtain a copy of any public record concerning a criminal investigation or prosecution or concerning what would be a criminal investigation or prosecution if the subject of the investigation or prosecution were an adult, unless the request is for the purpose of acquiring information subject to release as a public record and the sentencing judge finds the information necessary to support a justiciable claim. The bill clarifies that the term "public record concerning a criminal investigation or prosecution or concerning what would be a criminal

³ R.C. 149.43(C)(1) and (2); See also R.C. 2743.75.

⁴ R.C. 149.43(C)(3).

investigation or prosecution if the subject of the investigation were an adult” includes personnel files, payroll records, and attendance records of designated public service workers.⁵

Public record exemptions

The bill exempts certain records from the definition of a “public record” that may be obtainable under Ohio’s Public Records Law. Continuing law requires that, upon request by any person, all public records responsive to the request must be promptly prepared and made available for inspection and copying. If a public record contains information that is exempt from this duty, the public office must make available all of the information within the public record that is not exempt. If a document is a public record and is not exempt from the definition of a public record, the public office generally must permit its inspection or copying.⁶

The bill exempts the following records from disclosure under Public Records Law:

1. Records of the past, current, and future work schedule of a designated public service worker;⁷
2. A request form or a confirmation letter submitted to a public office by an individual asking the office to redact personal information of that individual from any record made available to the general public on the internet;⁸
3. An affidavit or a confirmation letter submitted to a county auditor, by a designated public service worker, a qualifying former designated public service worker, or the spouse of either, requesting the county auditor to remove the name of the individual filing the affidavit from any record made available to the general public on the internet or a publicly accessible database, and from the general tax list and duplicate of real and public utility property, and to instead insert the individual’s initials on the record;⁹
4. A request form or confirmation letter submitted to a public office (other than a county auditor) by a current or former designated public service worker asking the office to redact the designated public service worker’s address from any record made available to the general public on the internet.¹⁰ (See “**Current and former designated public service worker**,” below.)

Journalist access to exempted records

The bill adds the work schedules, request forms, and affidavits, which are exempt from release as a public record, to the list of records that may be obtained by a journalist. Under a process outlined in current law, a journalist may obtain certain records that are otherwise

⁵ R.C. 149.43(B)(8).

⁶ R.C. 149.43(B).

⁷ R.C. 149.43(A)(1)(tt).

⁸ R.C. 149.43(A)(1)(uu) and 149.45(C) and (F).

⁹ R.C. 149.43(A)(1)(vv) and 319.28(B) and (C).

¹⁰ R.C. 149.43(A)(1)(uu) and 149.45(D) and (F).

exempt from release as a public record. For example, the residential address of a designated public service worker, which is exempt from release as a public record, may be obtained by a journalist upon a written request to the public office. The request must include the journalist's name and title and the name and address of the journalist's employer and must state that disclosure of the information sought would be in the public interest.¹¹

Work schedule

As indicated above, the bill specifies that certain work schedules are exempt from disclosure under Public Records Law. The bill also specifies that "work schedule" does not include the docket of cases of a court, judge, or magistrate. Under current law, with certain exceptions, a record that is exempt from public records law, if retained, becomes a public record on the day that is 75 years after it was created. Under the bill, work schedules that are retained will become a public record three years after the date of creation.¹²

Current and former designated public service worker

The bill expands, to qualifying former designated public service workers, the ability to do both of the following:

- Request that a public office, other than a county auditor, redact the designated public service worker's address from any record made available to the general public on the internet.
- Submit an affidavit to the county auditor requesting that the county auditor remove the name of the individual filing the affidavit from any record made available to the general public on the internet or a publicly accessible database, and from the general tax list and duplicate of real and public utility property, and to instead insert the individual's initials on the record.

Under current law, only acting designated public service workers may submit such a request to a public office, and only acting designated public service workers or the worker's spouse may submit an affidavit to the county auditor. A redaction request must be in writing and on a form developed by the Attorney General. The bill specifies that a qualifying former designated public service worker must provide, with the form or affidavit, a confirmation letter from each employer at which the worker accumulated service confirming the years of service and that the worker departed service in good standing.¹³

¹¹ R.C. 149.43(B).

¹² R.C. 149.45(A)(1)(tt) and last paragraph of R.C. 149.43(A)(1).

¹³ R.C. 149.45 and 319.28.

Definitions

The bill defines “qualifying former designated public service worker” as a former designated public service worker with a minimum of five years of qualifying service who was an employee in good standing at the completion of such service.¹⁴

The following current law definitions are unchanged by, but relevant to, the bill:

“Designated public service worker” means a peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, county or multicounty corrections officer, community-based correctional facility employee, designated Ohio National Guard member, protective services worker, youth services employee, firefighter, EMT, medical director or member of a cooperating physician advisory board of an emergency medical service organization, state board of pharmacy employee, investigator of the bureau of criminal identification and investigation, emergency service telecommunicator, forensic mental health provider, mental health evaluation provider, regional psychiatric hospital employee, judge, magistrate, or federal law enforcement officer.¹⁵

“Personal information” means any of the following: (a) an individual’s social security number, (b) an individual’s state or federal tax identification number, (c) an individual’s driver’s license number or state identification number, (d) an individual’s checking account number, savings account number, credit card number, or debit card number, (e) an individual’s demand deposit account number, money market account number, mutual fund account number, or any other financial or medical account number.¹⁶

Vexatious litigators

The bill prohibits vexatious litigators from requesting public records from a public office or person responsible for public records absent (1) leave to do so from the court of common pleas and (2) an order from the court specifying with particularity what public records the person may request. Until these requirements are satisfied and evidence of satisfaction presented to the public office or person responsible for public records, the public office or person responsible for public records is under no obligation to respond to the request.¹⁷

If a public office or person responsible for public records receives an anonymous request for public records, the bill permits a public office or person responsible for public records to require that the requestor present an acceptable form of identification if the public office or person responsible for public records knows or has reasonable cause to believe that the requestor is a vexatious litigator. The bill separately permits a public office or person responsible for public records to require a requestor to present acceptable identification if the public office

¹⁴ R.C. 149.45(A)(3) and 319.28(A).

¹⁵ R.C. 149.43(A)(7).

¹⁶ R.C. 149.45(A).

¹⁷ R.C. 2323.52(J)(1).

or person responsible for public records knows or has reasonable cause to believe, based on the requestor's listed name, that the requestor is a vexatious litigator.¹⁸

Presentence investigation reports

Under continuing law, the contents of a presentence investigation report are confidential and not a public record. Existing law authorizes the court and other authorized parties to access the contents of a presentence investigation report under certain circumstances but does not state whether the contents of such reports may be shared between courts. The bill clarifies that the contents of a presentence report, or parts thereof, may be shared between courts.¹⁹

HISTORY

Action	Date
Introduced	09-12-23
Reported, H. Civil Justice	04-10-24
Passed House (89-0)	05-08-24
Reported, S. Judiciary	---

ANHB0265RS-135/ts

¹⁸ R.C. 2323.52(J)(2).

¹⁹ R.C. 2951.03(D)(1).