



THE CITIZEN ADVOCACY CENTER'S GUIDE TO THE OHIO PUBLIC RECORDS LAW AND OHIO OPEN MEETINGS ACT

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Open government statutes are cornerstone laws that ensure the public's capacity to play an essential role in the democratic process. They provide the mechanism by which people can knowledgeably discuss public issues, make informed political judgments, and monitor public officials and government agencies to ensure that government is acting in the public interest. To that end, the following is a general guide to the Ohio Public Records Law and Open Meetings Act statutes produced by the Citizen Advocacy Center.

PUBLIC RECORDS LAW

In 1963, the Ohio General Assembly enacted the Ohio Public Records Law (OPRL). The OPRL benefits from a strong presumption of coverage, and the Supreme Court of Ohio has expressly directed public officials that the records in their possession belong *to the people*, rather than to the government officials maintaining them. *White v. Clinton Cty. Bd. Of Cmsrs.*, 76 Ohio St. 3d 416, 667 N.E.2d 1223 (1996); *State ex rel. Patterson v. Ayers*, 171 Ohio St. 369, 171 N.E.2d 508 (1960). Within specified limitations, the OPRL allows anyone to inspect and obtain copies of all public records prepared, possessed, used by, or in the control of any public office. This access to government information is fundamental to our system of open government, and to the rights of citizens to be informed about the actions of public offices on matters of public concern. Anyone (including individuals, groups, associations, corporations, firms, partnerships or organizations) may obtain access to government-held information.

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WHAT INFORMATION IS AVAILABLE?

Some examples of the records available under the Public Records Law are meeting minutes, administrative manuals, expenditure reports, personnel records, state licensing requirements and lists, police incident reports, Department of Motor Vehicle records and property titles. E-mail communications are typically considered a public record for purposes of the Public Records Law.

WHO IS SUBJECT TO THE LAW?

Only public offices are subject to the OPRL.¹ Public offices include, but are not limited to, any state agency, public institution, political subdivision, or any other

¹ Note that the Ohio Public Records Law refers to public "offices" whereas the Ohio Open Meetings Act refers to public "bodies." The two terms are identical for all relevant purposes under the open government laws in Ohio.

organized body, office, agency, institution, or entity established by the laws of Ohio for the exercise of any function of government. Standard examples of public offices include state, county, city, village, township, and school district units. The judiciary is not subject to this law, but court records and proceedings generally are open to the public.

HOW TO FIND INFORMATION

Under the OPRL, every public office must make its existing records available to the public. The OPRL does not require these bodies to answer specific questions, create new records, or keep a central library or index of all government records. However, a records custodian has a duty to organize and maintain records so they are available for inspection or copying. Consequently, if it is unknown which public office has a record in question, an informal, polite telephone call may be the best place to start. Speaking with the individuals who are responsible for the records sought is an appropriate place to start an inquiry.

HOW TO MAKE A REQUEST

• Put it in writing

An informal telephone call or visit may help identify the type of records sought and the public office in possession of the records. However, to be official, the request for a public record must be made in writing. A written request will allow the requestor to take advantage of the access to the state courts provided in the OPRL. The requestor should date and keep a copy of the letter. Also, if sent by certified mail and request a return receipt, the requestor will be able to prove the date on which the request was received by the public body. Alternatively,

one may hand-deliver the request letter and obtain a receipt from the public office.

Also, be sure to check with the public office to determine if there are specific requirements for filing a public records request. Some public offices require certain procedures to be followed. Keep in mind that a public office may not require a requestor to identify him or herself or list a reason for the request in either a written or in-person request. The OPRL expressly provides that a public office may ask for an identity *only* if it first discloses that knowledge of the requestor's identity would enhance the public office's ability to deliver the records being sought and that it is within the requestor's rights to decline to reveal his or her identity.

• Be specific

The letter must specify what records are sought. A specific request will avoid confusion and high copying fees. If records are requested from a broad category, collecting the records might unduly burden the public office and justify a delay or refusal to release the records. If information on a certain topic is sought, but there are some kinds of material not wanted (*e.g.*, newspaper clippings, or records created before or after a certain date), the requestor can ask that these be omitted. A preferred format (*e.g.*, paper copy or computer disk) should also be stated.

• Request a fee waiver or reduction

Though the Public Records Law does not provide any basis for a waiver or reduction, one may be requested as described below.

SAMPLE REQUEST LETTER

Date

(If desired: Certified mail -- return receipt requested)

(name and title of official) (address of appropriate office of the public office)

Dear *(name)*,

Pursuant to the Ohio Public Records Law, Ohio Rev. Code § 149.43, this is a request for a copy of the following record(s): *(Describe the subject or the documents containing the information that you want).*

If any record or portion of a record responsive to this request is contained in a record or portion of a record deemed unresponsive to the request, I would like to inspect the entire document. Under the Public Records Law, all non-exempt portions of any partially-exempt documents must be disclosed.

If any fee in excess of \$___ will be incurred in fulfilling this request, please obtain my approval before the fee is incurred. *(Or request a fee reduction or waiver: I request a waiver of any fees your office would ordinarily impose in responding to a request. I do not seek these records for commercial purposes and I intend to disseminate the information because disclosure is in the public interest in that it _____.)*

If any records or portions of records are withheld, please state the exemption on which you rely and the basis on which the exemption is invoked. Thank you for your prompt consideration of my request. If you have any questions, or if I can be of assistance, please contact me at _____.

Sincerely,

(name)

WHAT IT MAY COST

• Reasonable copying costs

The OPRL allows public offices to charge actual duplication costs to pay for copying costs or for the use of copying equipment. A public body may not charge for the time and effort of a search for records. When records are stored, produced, organized, or compiled in an enhanced or “value-added” format, the public office may require as the copying charge the actual cost of copying the records in the format they exist. However, a public office cannot include a fee to defray the cost of producing the records in the enhanced format.

Fee waiver or reduction

The OPRL does not include any specific cost waiver or cost reduction provisions. Nonetheless, one may request a waiver or reduction if (a) the information is on the health, safety and welfare or the legal rights of the general public, (b) there is a plan to disseminate this information, or (c) there will not be a personal or commercial benefit from the disclosure of the documents. Ordinarily, the requestor does not have to explain why records are requested, but in an effort to obtain a fee waiver or reduction, one should explain what the intended use of the information is.

THE PUBLIC OFFICE RESPONSE

The OPRL does not specify a time period by which records must be produced, only that they must be promptly prepared. There is no case law clarifying how long is too long for producing records, but Ohio courts have held that public offices cannot avoid statutory penalties by complying only after a requestor has filed suit. If the request is partially or fully denied, the public office must provide an explanation that includes the underlying

legal authority that sets forth why the request was denied. The explanation is not required to be written, unless so requested.

A public office may also deny a request that is overly broad. If there is an overly broad request, or failure to make the request sufficiently clear to allow the public office to reasonably identify the records being sought, the public office may deny the request. However, in such a case, the public office is required to provide an opportunity to revise the request by informing the requestor of the manner in which the records are maintained by the public office.

HOW TO APPEAL A DENIAL

If a public office denies access to information requested under the OPRL there is no administrative right to appeal the decision. The requestor must proceed directly to state court for relief. In the alternative, a requestor may utilize a resource provided by the state as an intermediary measure. The Ohio Auditor of State’s Open Government Unit was created in 2003 to educate public and private entities about the intricacies of the OPRL and Ohio Open Meetings Act. Although the Open Government Unit is not a statutorily created office and does not have the power to sanction government bodies that violate the OPRL, it is actively involved in advancing compliance. Notably, the Open Government Unit permits members of the public to file OPRL inquiries through an online submission form that can be filed electronically or printed out and mailed. The Open Government Unit can be reached at:
Ohio Auditor of State’s Office
Open Government Unit
88 East Broad Street, 5th Floor
Columbus, Ohio 43215
Phone: (800) 282-0370
Fax: (614) 466-4333
Website:
<http://www.auditor.state.oh.us/OGU/Default.htm>

If a requestor wishes to bypass seeking help from the Open Government Unit, he or she may go to court for access to the records denied. A complaint for mandamus action asking a court to compel disclosure can be filed. The person who files the mandamus action is called the “relator.” A relator may file a mandamus action in any one of three courts: the local court of common pleas; the appellate court for that district, or the Ohio Supreme Court. However, if a relator files in the Ohio Supreme Court, the case may be assigned to mediation. To be entitled to mandamus, the relator must first demonstrate that he or she made an appropriate request for public records before filing the mandamus action. This is why it is important to put requests for public records in writing and send them by certified mail or obtain written receipt of a hand-delivered request from the public office.

REMEDIES

Under a 2007 amendment to the OPRL, a person who transmits a valid written request for public records by hand-delivery or certified mail is entitled to receive statutory damages if a court finds that the public office failed to comply with its obligations. The Public Records Law provides for statutory damages fixed at \$100 per business day during which the public office fails to comply with a proper request, beginning on the day the requestor files a mandamus action. The statutory damages cap at \$1,000, and may be reduced or eliminated if the court determines the denial was made either because a well-informed public official or records custodian would believe that the withholding of the records was not a failure to comply with an obligation under the law or that his or her actions served the public policy that underlies the authority asserted for withholding the information.

In addition to granting access to the requested records through mandamus, the court must award court costs and reasonable attorneys’ fees to a relator when it determines a proper request was denied. A court must award reasonable attorneys’ fees when the public office either failed to respond affirmatively or negatively to the request in the allotted time, or promised to permit the requestor to inspect or receive copies within a specified period of time but failed to fulfill that promise. Requestors representing themselves (*i.e., pro se*) are generally not awarded attorneys’ fees.

EXEMPTED INFORMATION

The Ohio Public Records Law exempts certain kinds of information from disclosure. However, the law differentiates between mandatory and discretionary disclosure. Specifically, there are types of records that *must not* be disclosed and that *may* be disclosed. In addition, if a requested record contains some exempt and some non-exempt information, the statute requires that the public office delete the exempt material and disclose the rest.

The Public Records Law includes a “catch-all exception” which mandates non-disclosure of certain types of information or records, including the following:

- Attorney-client privileged materials
- Certain medical records (*i.e.,* birth and death records)
- Trade secret or fair use copyrighted materials
- Records the release of which is prohibited by state or federal law
- Certain confidential law enforcement investigatory records

The Public Records Law also lists specific types of records that a public office *may* be permitted to withhold in its discretion, including the following:

- Records of probation and parole hearings
- DNA records stored in the DNA database
- Records pertaining to adoption hearings
- Public service child agency records

To view the exhaustive list of information specifically exempted from disclosure under the Public Records Law or to determine if the specific requested information could be exempt from disclosure, please refer to the actual legislation, Ohio Rev. Code § 149.43, available on the Ohio Attorney General's website:

http://www.ag.state.oh.us/legal/pubs/Ohio_Unshine_Laws_2008.pdf

STRENGTHS OF THE LAW

Following are a summary of several strengths of the Ohio Public Records Law:

- The Ohio Public Records Law benefits from a strong presumption of coverage.
- Ohio courts have interpreted the public records exemptions to the statute strictly, refusing to expand them beyond what is specifically enumerated.
- Penalties for violating the Public Records Law are substantial and if applied, serve as a serious deterrent to violating the law. Statutory damages are fixed at \$100 per business day during which the public office fails to comply with a proper request, beginning the day the requestor files a mandamus action.
- Ohio courts have established that a public office cannot avoid applicable penalties by complying with a records request only after the requestor has filed suit seeking to force compliance.
- Every elected official (or his or her appropriate designee) must receive three hours of training about the Public Records Law during every

term of office to ensure that at least one employee of each public office is educated appropriately about the official's obligations under the law.

In addition, the Attorney General must develop, provide and certify free training programs and seminars on the duty of public offices to provide access to public records.

- A public office may deny a request that is ambiguous or excessively broad, but in such cases, the public office must provide the requestor with an opportunity to revise the request by informing the requesting person of the following: 1) the manner in which the records are maintained by the public office; and 2) how the records are accessed in the ordinary course of the public offices' or persons' duties.
- The Public Records Law requires swift compliance by public offices, stating that records must be "promptly prepared and made available for inspection to any person at all reasonable times during regular business hours." Depending on how literally the compliance deadline is interpreted, public offices are required to satisfy public records requests in an expedited manner.
- A requestor need not identify himself or herself, nor state the purpose for requesting information. These provisions protect requestors' privacy rights and eradicate the possibility of a public office refusing to disclose information for fear of how the information is going to be used, as well as protecting the individual from potential retaliation for requesting documents.
- Ohio has established the Ohio Auditor of State's Open Government Unit. Although the Open Government Unit is not a statutorily

created office and does not have the power to sanction government bodies that violate the Public Records Law, it is actively involved in advancing Public Records Law compliance in Ohio, provides free training seminars to instruct citizens and governments on their rights and obligations under open government laws and provides a comprehensive website containing significant open government resources. The Open Government Unit permits members of the public to file Public Records Law inquiries through an online submission form that can be filed electronically or printed out and mailed.

RECOMMENDATIONS FOR REFORM

Following are a summary of several weaknesses of the Ohio Public Records Law and potential reforms:

- The lack of administrative remedies is a significant statutory flaw. Once an individual's initial request has been denied, there is no administrative appeal process, such as appealing to the head of the public office for reconsideration, prior to having to file a lawsuit for disclosure of the public documents. Providing only the avenue of litigation to address a request denial deters individuals from making requests for public records as litigation is cumbersome, expensive and time-consuming
- Even if a requestor takes the drastic step to file a lawsuit for access to public records, attorneys' fees are rarely recoverable under the Public Records Law. Mitigating circumstances allowing public offices to avoid paying attorneys' fees should be severely curtailed.
- The list of public records exceptions within Ohio's Public Records Law is extensive and has been expanded three separate times since 2004 (mainly involving privacy and security issues). Exceptions should be limited, not expanded.
- The statutory language mandating that records be "promptly prepared" can be a weakness insofar as no firm deadline is mandated. Ohio courts have failed to establish a legal definition of "promptly prepared" or set forth how much response time is too long or what length of delay would constitute a constructive denial.
- There is an exemption that should be revoked stating a person who is incarcerated is not required to be allowed a copy of any public record concerning a criminal investigation or prosecution unless the judge who imposed the sentence finds that the information sought is necessary to support what appears to be a justiciable claim of the person.
- The Ohio Auditor of State's Open Government Unit should have significant enforcement capacity and the right to bring an action under the Public Records Law.

OPEN MEETINGS ACT

In 1954, the Ohio General Assembly enacted the Ohio Open Meetings Act (the "Act"). The Open Meetings Act benefits from a strong presumption of coverage built into the statute. Ohio Revised Code § 121.22 establishes that, "This section shall be liberally construed to require public officials to take official action and to conduct all deliberations upon official business only in open meetings unless the subject matter is specifically excepted by law." Ohio courts have generally read this provision as a presumption in favor of finding bodies to be

“public,” and therefore covered by the Act. In addition, the Act promotes public participation in local government. It requires public bodies to hold open meetings, provide the public with adequate notice of meeting times so that citizens may freely attend, and keep records of public meetings. The Act gives citizens the right to be present to observe government meetings, except in limited circumstances designed to protect the public interest or personal privacy concerns.

WHAT IS A MEETING?

A meeting is a prearranged discussion of the public business of a public body by a majority of its members. Exceptions are provided for grand juries and audit conferences, as well as other public bodies (*i.e.*, the adult parole authority, the organized crime investigations commission, the child fatality review board) under certain conditions. The absence of a quorum ordinarily means that the Act’s coverage does not apply, thus final actions may not be made, and members of the public have no right to attend a meeting. However, one Ohio court has held that where a public body prearranges back-to-back, repetitive sessions of less than a majority of members at each session, but with a majority present when all sessions are considered together, the repetitive sub-quorum sessions are considered a meeting under the Act and must be open to the public. *State ex rel. Cincinnati Post v. City of Cincinnati*, 76 Ohio St. 3d 540, 668 N.E.2d 903 (1996).

THE OPEN MEETINGS ACT APPLIES TO PUBLIC BODIES

The Open Meetings Act defines “public body” broadly to include most government bodies that make decisions on matters of public business. Public bodies include “[a]ny board, commission, committee, council, or similar decision-making body of a

state agency . . . and any . . . board, commission, committee, council, agency, authority, or similar decision-making body of any county, township, municipal corporation, school district, or other political subdivision.” Ohio Rev. Code § 121.22(B)(1). Examples of public bodies include the Ohio Elections Commission, the Ohio State Board of Education and its committees, boards of county commissioners, county boards of elections, city councils, city and town zoning boards, and local school boards.

Although the Act provides wide coverage, it can be trumped by individual city charters due to the home rule provision in Article XVIII, Section III of the Ohio State Constitution. Where a local government has a home rule charter that does not provide for as much public access as the sunshine law (*i.e.*, the Act), some state appellate courts hold that the charter prevails over the sunshine law. *See, e.g., Hills & Dales Inc. v. City of Wooster*, 4 Ohio App. 3d 240, 448 N.E.2d 163 (Wayne 1982); *City Comm’n of Piqua v. Piqua Daily Call*, 64 Ohio App. 2d 222, 412 N.E.2d 1331 (1979). The Ohio Supreme Court has not provided comprehensive guidance regarding this issue, but has applied the Act’s coverage to local governments with home rule charters where there was no direct conflict between the charter and the sunshine law, such as where the charter provides for greater public access than the sunshine law.

WHAT DOES IT MEAN TO BE OPEN?

Public Notice

Unlike most states, Ohio does not impose specific requirements for how far in advance notice must be given. However, public bodies are required to establish at least one reasonable method, by rule, “whereby any person may determine the time and place of

all regularly scheduled meetings and the time, place, and purpose of all special meetings.” Ohio Rev. Code § 121.22(F). Placing a sign on the front door of town hall or publishing the information in a newspaper of general circulation constitute reasonable methods of notice under the Act. For all meetings, including special and emergency, a public body must provide notice to members of the news media and the public who have requested notification and may post notice in other locations, including the Internet.

Agendas

A public body is *not* required to include the agenda items to be discussed at a regular meeting in its notice. However, the public body must comply with requests to give “reasonable advance notification” of all meetings at which any specific type of public business is to be discussed provided the requester has paid a reasonable fee.

Special Meetings

For special meetings, public bodies must give at least 24 hours notice in advance of the meeting, and the notice must include the time, place and a description of the purpose of the meeting.

Emergency Meetings

For emergency meetings, a public body must give notice of an emergency meeting immediately after calling the meeting, and the notice must include the time, place and a description of the purpose of the meeting.

ATTENDING MEETINGS

The Act gives any person the right to attend the meetings of public bodies, with the exception of statutorily authorized closed sessions. Though anyone may attend a public meeting, there is no right under the

law to participate or comment at a public meeting. While many public bodies permit public comment, they are not required to do so under the Act.

RECORDING PUBLIC MEETINGS

The Act does not specifically include provisions authorizing the audio or video recording of proceedings at open meetings. However, the Ohio Attorney General has determined that any person may record the proceedings at open meetings, though the public body holding the meeting may prescribe reasonable rules to govern the recording.

WRITTEN MINUTES

Public bodies must keep minutes of all meetings, including closed sessions. For open meetings, the law provides that the minutes need only reflect the general subject matter of meetings. However, the Ohio Supreme Court has established that a public body must keep full and accurate minutes, *i.e.*, the minutes must state sufficient facts and information to permit the public to understand and appreciate the rationale behind the public body’s decisions. The Act further provides that the minutes of a regular or special meeting must be promptly prepared, filed, and maintained by a public body and must be open to public inspection. For closed sessions, the minutes only need to give a general sense of the subject matter discussed and need not be made available to the public.

WHEN MAY A PUBLIC BODY CLOSE A MEETING OR HOLD AN EXECUTIVE SESSION?

Public bodies may hold closed meetings provided that they state in an open session a specific statutory exemption for closing a session. A majority of members present during an open session must also vote to close the meeting. The public body may then close the meeting, but must take all final actions in open session.

There are seven specific exemptions under the Open Meetings Act that allow a public body to close a meeting. The following summarizes these exemptions:

- The appointment, employment, dismissal, discipline, promotion, demotion, or compensation of a public employee or official, or the investigation of charges or complaints against a public employee, official, licensee, or regulated individual, unless the public employee, official, licensee, or regulated individual requests a public hearing (this exemption does not apply to the discipline of an elected official for conduct related to the performance of his or her duties);
- The purchase or sale of real estate for public purposes;
- Pending or imminent litigation;
- Negotiations or bargaining sessions with public employees concerning their compensation or other terms and conditions of their employment;
- Matters required to be kept confidential by federal law or regulations or state statutes;
- Details relative to the security arrangements and emergency response protocols for a public body or a public office; and

- Matters involving trade secrets (but only in connection with local hospitals).

WHAT SHOULD YOU DO IF YOU SUSPECT A VIOLATION OF THE OPEN MEETINGS ACT?

If present at a meeting where a violation of the Open Meetings Act may have occurred, the matter should be raised with the public body insisting that they comply with the terms of the Act. As described above, the Ohio Auditor has created the office of the State's Open Government Unit. This office acts as an intermediary between citizens and public bodies by providing help in resolving disputes regarding open government laws.

The Open Government Unit can be reached at:

Ohio Auditor of State's Office
Open Government Unit
88 East Broad Street, 5th Floor
Columbus, Ohio 43215
Phone: (800) 282-0370
Fax: (614) 466-4333
Website:
<http://www.auditor.state.oh.us/OGU/Default.htm>

REMEDIES

If a violation of the Open Meetings Act has occurred, a complaint may be filed in the court of common pleas for the county where the meeting in question took place for an injunction or a mandamus action. Any suit must be filed within 2 years of the alleged violation. No state or local governmental official is authorized to bring legal action to enforce the Act in Ohio. However, if a suit by a member of the public results in an injunction against a public body, the Attorney General or prosecuting attorney is

responsible for bringing an action against officials who violate the injunction.

If the court finds a violation by the public body, the Act establishes that the court *must* order it to pay the plaintiff a \$500 civil forfeiture fine. The public body defendant must pay a civil forfeiture for each violation. If the court finds a violation by the public body defendant, it *must* award the plaintiff reasonable attorneys' fees under the statute. A court has the discretion to reduce an award of attorneys' fees if a well-informed public body reasonably would believe that the public body was not violating the Act *and* that its conduct would serve the public policy that underlies the authority asserted by the public body for not acceding to the demands of the person who successfully sought the injunction.

Red Flag: If the court does not issue an injunction in an Open Meetings Act lawsuit and finds that the plaintiff's action was frivolous, the court may award all court costs and reasonable attorneys' fees to the public body.

There are no criminal penalties for violating the Open Meetings Act. However, upon finding a violation of the Act, a court may prescribe various remedies. For example, the court may, as fairness and justice require:

- Issue an injunction to prevent future violations;
- Remove a public official who knowingly violates an injunction from office if the Attorney General or prosecuting attorney brings an action against him or her; or
- Void any final action taken during a wrongfully closed session.

STRENGTHS OF THE LAW

Following are a summary of several strengths of the Ohio Open Meetings Act:

- The Act benefits from a strong presumption of coverage built into the statute.
- Ohio Revised Code § 121.22 establishes that, "This section shall be liberally construed to require public officials to take official action and to conduct all deliberations upon official business only in open meetings unless the subject matter is specifically excepted by law." Ohio courts have generally read this provision as a presumption in favor of finding bodies to be "public" and therefore covered by the Act.
- The Act benefits from a lenient standing requirement and strong burden of proof presumption with respect to litigation. Under the Act, "any person" may bring suit for a violation of the statute, and "[i]rreparable harm and prejudice to the party that sought the injunction shall be conclusively and irrebuttably presumed upon proof of a violation or threatened violation of this section."
- The Act has robust enforcement and penalty provisions. While only individuals can bring litigation, the remedies available under the Act are extensive and for the most part mandatory.
- Ohio has only seven categories of closed session exemptions, a limited amount compared to most states, and Ohio courts have been strict in upholding limitations on calling closed sessions based on these exemptions. In addition, since the Act requires courts to invalidate *any* formal action adopted at a closed meeting, courts have been aggressive

in invalidating formal actions that result from improper closed session deliberations.

- As described above, the creation of the Ohio Auditor of State's Open Government Unit positively impacts the public's open government rights in Ohio. Although the Open Government Unit is not a statutorily created office and does not have the power to sanction government bodies that violate the Open Meetings Act, it is actively involved in advancing open government compliance in Ohio.

RECOMMENDATIONS FOR REFORM

Following are a summary of several weaknesses of the Ohio Open Meetings Act and potential reforms:

- The most significant weakness of Ohio's Open Meetings Act arises not due to a deficiency in the statute itself, but because the Ohio judiciary's interpretation of provisions of the Ohio State Constitution allows the Act to be trumped in certain conditions. Because the Act does not purport to be an exercise of police power by the state legislature, Ohio courts have practically voided the Act's operation against charter cities as violative of the Ohio Constitution's "home rule provision" in Article XVIII in Section III. Since Ohio is a home rule state, courts have concluded that when the local law and the state open government laws conflict, the local law prevails. This judicial interpretation can leave citizens without any right of access to city council meetings if their city charter neglects to provide such protection.

- Ohio courts have held that the Act creates no right of public participation at public meetings; it merely requires that those meetings be open for the public to observe. The Act should be revised to mandate public comment at open meetings, subject only to reasonable time, place and manner restrictions.
- The Act, by remaining silent, permits a public body to remedy its noncompliance with the Act through subsequent remedial action. A public body can likely cure a violation merely by remedying its illegal actions after the fact.
- The Act takes an unusually aggressive approach of permitting public body defendants to recover from plaintiffs in an Open Meetings Act lawsuit. If the court does not issue an injunction and determines that a citizen's suit was frivolous, the court *must* award to the public body court costs and reasonable attorneys' fees as determined by the court.

FOR MORE INFORMATION

This contains a general description of the Ohio Public Records Law and Open Meetings Act and suggestions for how to use it effectively. For specific language, consult the statute itself, Ohio Rev. Code § 149.43, and related records laws in Chapter 149. For access to federal records, consult the federal Freedom of Information Act, 5 U.S.C. § 552. To view the Ohio Open Meetings Act in its entirety, please refer to Ohio Rev. Code § 121.22.

DISCLAIMER

This guide is not intended to be legal advice, but only an overview of open government laws. You are advised to consult an attorney before taking any legal action. References to procedures and laws are only summaries and

are not meant to be complete or all encompassing. If you have questions or desire further information, call (630) 833-4080.

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