

REGULAR MEETING – MONDAY, SEPTEMBER 24, 2007

The Board of County Commissioners of Medina County, Ohio met in regular session on this date with the following members present:

SHARON A. RAY

PATRICIA G. GEISSMAN

STEPHEN D. HAMBLEY

Mrs. Geissman offered the following resolution and moved the adoption of same, which was duly seconded by Mr. Hambley

RESOLUTION NO. 07- 921

**APPROVAL OF A PUBLIC RECORDS POLICY FOR ALL
DEPARTMENTS UNDER THE AUTHORITY OF THE
MEDINA COUNTY BOARD OF COMMISSIONERS**

WHEREAS, the Ohio General Assembly recently adopted House Bill 9 which, in part, established specific requirements for the handling of public records for all public offices within the State of Ohio, and

WHEREAS, this legislation becomes effective September 29, 2007 and in order to assure compliance with its requirements, a public records policy has been prepared for use by the Medina County Board of Commissioners and all departments under the authority of the Board of County Commissioners, and

WHEREAS, the proposed public records policy has been reviewed by the Board of County Commissioners, County Administrator, Human Resource Director, and County Prosecuting Attorney's Office and has been deemed to be an acceptable and necessary document to ensure that the records maintained by the Board of Commissioners allows for proper access and a means to provide trust between the public and the Board of Commissioners.

NOW, THEREFORE, BE IT RESOLVED by this Board of County Commissioners that the proposed public records policy, attached hereto as Exhibit A, for use by the Board and its departments be hereby approved and that the effective date of use shall be September 29, 2007.

BE IT FURTHER RESOLVED that said policy be incorporated into the Board of County Commissioners' employment manual and that notification of said policy be posted in conformance with legal requirements.

Voting AYE thereon: Ms. Ray, Mrs. Geissman and Mr. Hambley

Adopted: September 24, 2007

Prepared by: County Administrator



Medina County Policy Manual



Policy: Public Records	Section: Work Rules	Number: 7.060
Issued:	Reviewed/Revised:	Page #: 1 of 7

§ ORC 149.43

NOTE: *It is in the best interest of the Medina County Board of Commissioners to consistently, ethically, and legally uphold its duty to respond to public records requests. As such, this policy is to be strictly enforced in all but the most exceptional requests. Where questions exist regarding appropriate application of this policy, employees are to direct their questions through their department's chain of authority. Where questions remain, the department director will contact the County Administrator for appropriate resolution.*

"The public office shall distribute the public records policy adopted by the public office under division (E)(1) of this section to the employee of the public office who is the records custodian or records manager or otherwise has custody of the records of that office. The public office shall require that employee to acknowledge receipt of the copy of the public records policy. The public office shall create a poster that describes its public records policy and shall post the poster in a conspicuous place in the public office and in all locations where the public office has branch offices. The public office may post its public records policy on the internet web site of the public office if the public office maintains an internet web site. A public office that has established a manual or handbook of its general policies and procedures for all employees of the public office shall include the public records policy of the public office in the manual or handbook."
 ORC 149.43(E)(2)

A. As an Ohio public office, the County Board of Commissioners, including its departments and agencies, is subject to Ohio's Public Records Act which requires the County make records available for inspection upon request. In accordance with the Ohio Public Records Act, it is the policy of the County Board of Commissioners to provide convenient, prompt and open access to all public records maintained by the Board of Commissioners.

Therefore, this policy serves to provide Board of Commissioners' employees with information regarding the Public Records Act, including the definition of what is and is not considered a public record, and to establish a procedure for responding to requests for public records. (Refer to Public Record Exceptions, Section F of this policy.)

7.060 Public Records

Policy: Public Records	Section: Work Rules	Number: 7.060
Issued:	Reviewed/Revised:	Page #: 2 of 7

B. A public record is generally any record kept by a public office, except those records that are otherwise exempt under Ohio's Public Records Act, the release of which are prohibited by state or federal law.

ORC 149.011(G):

"Records" includes any document, device, or item, regardless of physical form or characteristic, including an electronic record as defined in section 1306.01 of the Ohio Revised Code, created or received by or coming under the jurisdiction of any public office of the state or its political subdivisions, which serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office."

ORC 1306.01(G):

"Electronic Record" means a record created, generated, sent, communicated, received, or stored by electronic means."

1. Examples of public records may include all or part of, but are not limited to, financial documents, personnel files, e-mail, some draft documents, and records kept in the ordinary course of business.
2. Labeling something as "*confidential*" does not automatically exclude it from being a public record. Some common exceptions to the Public Records Act include records which relate to disabilities and accommodations under the Americans with Disabilities Act, true medical records, Social Security numbers, employee home addresses, and attorney-client communications.
3. Any record created when conducting County business is likely to be considered a public record under the Act. As a result, all types of communication (written, verbal, and electronic) should be factual, objective, thorough, and measured in tone.
4. Documents cannot be destroyed to avoid compliance with the Public Records Act. All records should be maintained and destroyed in accordance with established and approved records retention schedules.

C. Request for Public Records

1. The County is required to provide records to a requester within a reasonable period of time. Some requests may be so broad and ambiguous that the request cannot be fulfilled.

7.060 Public Records

Policy: Public Records	Section: Work Rules	Number: 7.060
Issued:	Reviewed/Revised:	Page #: 3 of 7

2. **While an individual is not required to submit a public records request in writing**, the County encourages the requester to submit requests in writing in an effort to prevent any misunderstanding on either part as to the records the requester is seeking.

3. Individuals requesting a public record cannot be forced to provide identification, do not have to provide a proper purpose for requesting the record, and cannot be charged for time and labor of county employees spent fulfilling the request.

"Unless specifically required or authorized by state or federal law or in accordance with division (B) of this section, no public office or person responsible for public records may limit or condition the availability of public records by requiring disclosure of the requester's identity or the intended use of the requested public record. Any requirement that the requester disclose the requestor's identity or the intended use of the requested public record constitutes a denial of the request". ORC 149.43(B)(4)

"A public office or person responsible for public records may ask a requester to make the request in writing, may ask for the requester's identity, and may inquire about the intended use of the information requested, but may do so only after disclosing to the requester that a written request is not mandatory and that the requester may decline to reveal the requester's identity or the intended use and when a written request or disclosure of the identity or intended use would benefit the requester by enhancing the ability of the public office or person responsible for public records to identify, locate, or deliver the public records sought by the requester." ORC 149.43(B)(5)

4. The department/agency should not create new records to fulfill a request. For example, if information that is stored in a number of different electronic databases is requested, the County is not required to create a report that summarizes the information; it is only required to provide a copy of the information as it currently exists.

5. Responsibility for maintaining and producing public records according to law resides with the appointing authority/department head where the records are kept to assure compliance with state law, and with the County's established records retention schedule.

D. Intake of Request Procedure

1. All public records shall be promptly prepared and made available for inspection to any person at all reasonable times during regular business hours.

7.060 Public Records

Policy: Public Records		Section: Work Rules	Number: 7.060
Issued:	Reviewed/Revised:		Page #: 4 of 7

2. County personnel may inform the requester that the request should be reasonably specific and describe what is being sought.

"If a requester makes an ambiguous or overly broad request or has difficulty in making a request for copies or inspection of public records under this section such that the public office or the person responsible for the requested public record cannot reasonably identify what public records are being requested, the public office or the person responsible for the requested public record may deny the request but shall provide the requester with an opportunity to revise the request by informing the requester of the manner in which records are maintained by the public office and accessed in the ordinary course of the public office's or person's duties." ORC §149.43(B)(2)

3. Under current Ohio law, a public office or person responsible for the public record shall permit that person to choose to have the public record duplicated upon paper, upon the same medium upon which the public office or person responsible for the public record keeps it, or upon any other medium upon which the public office or person responsible for the public record determines that it reasonably can be duplicated as an integral part of the normal operations of the public office or person responsible for the public record. When the person seeking the copy makes a choice under this division, the public office or person responsible for the public record shall provide a copy of it in accordance with the choice made by the person seeking the copy.
 - a. The public office or person responsible for the public record is to advise the individual requesting the public record that a timely response to their request will be provided once it can be determined that such a record exists. The Ohio Public Records Act does not require that a new public record be created in response to a request.
 - b. The requester is to be apprised of the estimated timeframe to produce an existing public record thereby allowing the agency/department the opportunity to assemble and copy the requested record(s). Additionally, the requester is to be apprised that paper copying charges are set at a base cost of .05¢ per copy, with certain exceptions based on documented costs. If video tapes, cassette tapes, computer discs or any other form of medium is requested, the fee shall be the replacement cost or reproduction cost. There will no charge for emailed documents.

7.060 Public Records

Policy: Public Records	Section: Work Rules	Number: 7.060
Issued:	Reviewed/Revised:	Page #: 5 of 7

- c. Costs of providing copies (including duplication costs, postage costs, and other costs of delivery or transmission, etc.) **may be required to be paid by requesters in advance.**
- 4. Public offices are not required to allow requesters to make copies themselves.
- 5. The public office or person responsible for the public record is responsible for tracking the public records requests received, including name of requester, if available; a summary description of records being sought; date request received; date request completed; and what records were provided or denied.
- 6. The director of the department responsible for the public record is to advise the County Administrator when requests are made by the media. Additionally, the County Prosecutor's Office should be contacted when County records are requested by attorneys.

E. Collection and Response

- 1. The records custodian must comply with the request for public records by collecting the requested public records as promptly as possible. A public record may contain information that is exempt from disclosure. If such information is redacted, **it is to be redacted from the copy, not the original.**
- 2. If a request is denied, in whole or in part (through redaction of certain information), the requester must be provided with an explanation of the denial – including legal authority. If the initial request was in writing, this explanation must also be in writing.
 - a. ORC §149.43(B)(3):

"If a request is ultimately denied, in part or in whole, the public office or the person responsible for the requested public record shall provide the requester with an explanation, including legal authority, setting forth why the request was denied. If the initial request was provided in writing, the explanation also shall be provided to the requester in writing."
 - b. **Prior to denial, a records request shall first be reviewed by the Prosecutor's Office and County Administrator.**
 - c. **If a request for a record is ultimately denied, the requestor shall be so notified through use of form PR-1 (attached).**

7.060 Public Records

Policy: Public Records		Section: Work Rules	Number: 7.060
Issued:	Reviewed/Revised:		Page #: 6 of 7

3. The records that have been collected to fulfill the public records request must be reviewed by the County Administrator prior to their release to ensure fulfillment of the public records request and compliance with the Ohio Public Records Act. The collected public records should be submitted to allow sufficient time for review.
4. Upon request the appropriate public office or person responsible for public records shall transmit a copy of the public record to any person by United States mail within a reasonable period of time after receiving the request for the copy.
5. In most cases, if the request is to inspect the public records, the inspection will take place at the location where the records have been collected, ordinarily during regular business hours and under the supervision of the records custodian or designee.
6. If the request is for copies, the records custodian will make arrangements for any copying of the requested public records at the rate described in Section D.3.b. of this policy. Any fees received should be remitted to the County Treasurer's Office.
7. The Prosecutor's Office is available throughout the process to provide legal advice to County staff to ensure compliance with state and federal law.

F. Generally, records exempt from the Public Records Act include:

1. **Medical records** - any documents pertaining to the medical history, diagnosis, prognosis, or medical condition of an individual.
2. **Investigatory records** - applies primarily to confidential law enforcement investigatory records of a police/sheriff's department, but also includes some records of administrative investigation, e.g. claims of harassment, discrimination, and theft.
3. **Trade secret and intellectual property records** - most research-related information, other than financial or administrative data, that has not previously been publicly released, published, or patented.
4. **Probation and parole records;**
5. **Adoption proceeding records;**
6. **Trial preparation records;**
7. **DNA records;**

7.060 Public Records

Policy: Public Records	Section: Work Rules	Number: 7.060
Issued:	Reviewed/Revised:	Page #: 7 of 7

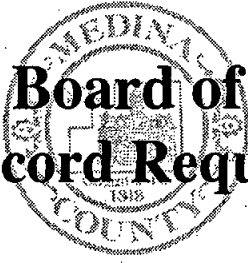
8. **Attorney-Client work product;**
9. **Child abuse reports;**
10. **Any and all records, the release of which is prohibited by State or Federal law.**

The above cited exempt records are not to be construed as exhaustive or all inclusive.

G. Requests Giving Rise to the Question of Releasing Prohibited or Exempted Records

1. A request made to inspect or obtain a copy of a record maintained by the Board of County Commissioners, the release of which may be prohibited or exempted by either State or Federal law, shall be forwarded to the County Prosecutor for research and/or review. The requester shall be advised that their request is being reviewed by the County Prosecutor to ensure that protected, exempted, information is not improperly released by the Board of County Commissioners. Form PR-1 shall be utilized for this purpose.
2. Records, the release of which is found to be prohibited or exempted by either State or Federal law, or not considered public records as defined by ORC 149.43 (A)(1), shall **NOT** be subject to public inspection.

Medina County Board of Commissioners Public Record Request Form



Thank you for your recent record request. The Medina County Board of Commissioners will respond in accordance to the applicable provisions of the Ohio Public Records Act.

On _____, you requested the following records/information:
Date

The record/information requested:

Legal Authority Cited

(if applicable)

- Is not maintained by this office
(office will attempt to direct requestor to correct office)
- Is overly ambiguous *(despite efforts to clarify)*.
- Does not exist and/or no obligation to create.
- Has been disposed pursuant to One Time Records Disposal or pursuant to Retention Schedule.
- Is not subject to release in its entirety.
- Is not subject to release, however the following redactions have been made to protect exempted information (149.43 (B)(1)-(3)):

Redaction

Legal Authority Cited

Prepared by (Dept. Head): _____

Date: _____

County Administrator Review: _____

Date: _____

Legal Review by: _____

Date: _____