

## Public Records Notice | Shelby County Ohio Auditor

This notice is designed to describe the basics of the public records policy for the Shelby County Commissioners, their departments and the elected official offices that chose to adopt it. It is not the entire policy.

The Shelby County Auditor will follow Ohio law in responding to requests for public records.

This office will provide copies of any public record of this office that must be provided by law.

Because of the nature of the work of this office, some of the records that may be public must be reviewed by a prosecutor prior to its release to insure that non-public records and information are protected. Such a review will take time, but will be done as promptly as possible.

If your request is for a record held by another office known to us, we will attempt to direct you to the agency that can provide you with the document.

In general, we will only request your identity, and a written request, or the reason for the request if that information will assist us in providing the documents requested. You are not required to provide that information. Occasionally, Ohio law requires this information to determine whether a request can be honored under the law.

Please be aware that we are not required to create a record for you.

Please be aware that you are not permitted to make copies of the public records yourself.

If a public record request is denied, this office will provide you with a basic reason for the refusal. It will only provide a written reason if the request for records is made in writing. Any redactions made to a document will either be clearly visible to you, or you will be told the type of information redacted.

We reserve the right to charge for the actual costs of making copies (and any mailing costs, if applicable) of any records requested, and may require those charges to be paid in advance.

We reserve the right to waive any aspect of this policy, at our sole discretion, to the extent allowed by law.

The public records policy is subject to change without notice.

## Public Records Policy

### A. POLICY.

1. Shelby County and its employees must follow Ohio law in responding to public records requests.
2. Providing access to public records for the public is part of the obligations and duties of each department and should be given as much priority as possible. Responses to public record requests must be provided promptly based upon all the facts and circumstances of the request.
3. Each department must make this policy readily available to any member of the public requesting to review it. Copies of this policy, like other public records, will be provided promptly upon request.

4. Public record requests can be made by any member of the public during the regular business hours of the department.
5. Each department must post a poster describing its public records policy in a conspicuous place available to the public in its office and each of its branch offices.
6. Each department head will designate at least one person in that department to be the custodian of the records for that department. All employees handling public records requests must sign a written acknowledgement that he has been given a copy of this policy. The department head will insure that employees handling public records requests are well informed of the public records law by insuring each employee attends training as required by law, and as necessary to insure that the employees are kept well informed of department obligations under the law.
7. All department records, public or non-public, must be maintained pursuant to a records retention and disposition schedule that has been approved by the County Records Commission, the Ohio Historical Society, and the State Auditor.

Each department head will create only those records required by Ohio law to be kept, and those that are necessary for adequate documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the department and for the protection of the legal and financial rights of the county and persons directly affected by the department's activities.

8. All records are the property of the department concerned and must not be removed, destroyed, mutilated, transferred, or otherwise damaged or disposed of, in whole or in part, except as provided by law or under the rules adopted by the County Records Commission. Violations of this section of the policy may subject the county and its employees to a civil lawsuit. Each proven violation is subject to a \$1000.00 fine.
9. Elected officials are required to attend or designate someone to attend three hours of certified public records training for each term that the official serves in office. Under Ohio law certified training at this time means that it has been approved by the Attorney General's Office and that it has been approved for CLE credits by the Ohio Supreme Court.

#### **B. PROCEDURE FOR INSPECTION AND RELEASE.**

Each department will prepare, make available, and copy at cost, the public records of that department upon the request of any member of the public, as follows:

1. Anyone wanting to inspect or obtain copies of records maintained by the department must reasonably identify the records they wish to inspect or have copied.
  - a. When a request is made, employees are not permitted to request a person's identification, a written request for public records, or the reason for the request unless that information is necessary to fulfill the request or unless it will assist in responding to the request. WHEN THE INFORMATION IS REQUESTED TO HELP IN IDENTIFYING, LOCATING OR DELIVERING THE RESPONSE, THE EMPLOYEE MUST INFORM THE PERSON THAT THE INFORMATION IS NOT REQUIRED.
  - b. When a request is not reasonably clear, the county employees must explain how the records are accessed in the ordinary course of business so that the person may revise the request. The employee may also assist the person to formulate the request so that it reasonably identifies the records.
  - c. If the employee knows that the records requested are held by another county department, the employee should direct that person to the department responsible for those records.

d. Redaction: (obscuring of information in a copy of a record to be provided pursuant to a public record request because it is exempt from the public records law) redaction is considered a denial of a public records request unless the information is exempt from disclosure under the law.

i. Redaction is generally not to be done to the department original, but is done to a copy of that record in preparation for a response to a public record request.

ii. All redactions should either be clearly visible to the requesting person or the person should be informed of what type of information was redacted.

iii. Legal authority for a redaction must be provided. If the request was made in writing, the reason and legal authority must be given in writing. The legal authority must be accurate, but can be supplemented in the future if necessary.

2. To protect the records from potential damage, no person is to be permitted to make their own copies of the records requested. Employees wanting copies of public records are subject to the same policy as any other citizen, and should make their requests to another employee while on their own time. Employee self-help to records is grounds for discipline up to and including termination.

3. Providing access to public records for the public is part of the obligations and duties of each department and should be given as much priority as possible. Responses to public record requests should be provided promptly based upon all the facts and circumstances of the request.

4. The county is not required to create a public record. If, however, the computers used by the department in question are capable of printing a "report" through its current software that satisfies a public records request, then the "report" is a record that is considered to exist already under Ohio Public Records law.

5. Under Ohio law, an incarcerated person may receive public records, but only if the records concern a criminal investigation. The incarcerated person must also follow very strict guidelines.

- The records must be "public records" which are not subject to an exemption from disclosure.
- The incarcerated person must have secured a finding from the judge who imposed the sentence of incarceration (or that judge's successor) that the information sought in the public record is necessary to support a justifiable claim of the person. ORC §149.43(B)(4)

Courts have denied the public records requests of inmates because this procedure was not followed.

### **C. FORMAT OF RESPONSE.**

The person making the request is allowed to request the records be produced in:

- a. paper format,
- b. in the same way that the department keeps it, or
- c. in any other medium that the department determines it reasonably can be copied as an integral part of the normal operations of the department.

### **D. TRANSMISSION BY MAIL.**

1. At the request of a person seeking the public records, the department will transmit a response to a public records requests via mail or other delivery service reasonably available to the office, but only upon prior payment of the actual costs of such delivery.

2. Mail requests are strictly limited to ten per month unless the person making the request certified in writing that he does not intend to use or forward the information on to be used for commercial purposes. Commercial purposes does not include:

- a. reporting or gathering news,
- b. reporting or gathering information to assist citizen oversight or understanding of the operation or activities of government, or
- c. nonprofit educational research.

#### **E. WAIVER OF POLICY.**

The department head may waive any or all provisions under this policy when a request to inspect or obtain copies is made:

- a. By another government agency or its representative;
- b. In complying with a court order;
- c. In complying with the requirements of State laws or regulations; or
- d. As otherwise allowed by law.

#### **F. RETENTION SCHEDULE FOR ELECTRONIC MAIL AND OTHER RECORDS.**

1. A department records retention schedule is required by Ohio law. Each department is responsible for maintaining its records and maintaining an updated records retention schedule. Retention periods for records should be determined by evaluating the historical, administrative, legal, fiscal, and historical (hereinafter "HALF") value of the records being scheduled. Care should be taken to title and describe each type of department record on a retention schedule. As new types of records are identified the new type should be added to the department retention schedule.

2. Because of the constant changes in technology, even the most current forms of electronic records preservations may be insufficient for long term reliability. The retention schedule should be set based upon "HALF" value of the records. If the department cannot realistically maintain that record in electronic form for that period of time, then it should be maintained in paper or other appropriate format for the remainder of the retention period.

Departments maintaining records in electronic format as the original record should have a detailed written documentation that supports the basis for its belief that the technology and funding will remain sufficiently stable to satisfy the requirements of the retention period and public records law, and when possible have a written plan for how the electronic information will migrate to a different technological system when necessary.

3. Whenever feasible, continually updated documents should be scheduled as such and an annual copy should be printed and retained for the appropriate retention period under "HALF."

4. Particular care should be taken to insure that electronic records are scheduled for destruction and destroyed pursuant to the schedule. While this is also true of other formats of records, because of software and technology changes, the expense involved in attempting to comply with a public records request for an electronic record that could have been destroyed but was not could be substantial.

5. E-mail and voicemail. Because the costs of preserving electronic mail of enduring administrative value is cost prohibitive, any e-mail records with enduring administrative value should be printed and retained in paper format

in the appropriate paper file. Care should be taken to insure that electronic mail and other documents are appropriately scheduled on a records retention schedule. In extraordinary circumstances, when the agency in its opinion believes a voicemail has enduring value, the agency should have it transcribed verbatim for its records in the form of an affidavit by the employee, and appropriately notarized as to its accuracy.

E-mails from and to private e-mail accounts involving the conduct of public business are a public record. Each employee is responsible for insuring that these types of e-mails are preserved according to the e-mail retention policy.

#### **G. PUBLIC RECORD EXCEPTIONS.**

The law allows some records not to be, and in some cases prohibits certain records from being released to the public. Determining the status of certain records can be difficult. The following are a list of more common exceptions to the public records law:

- a. Medical records;
- b. Probation and parole records;
- c. Adoption proceedings;
- d. Information in the putative father registry;
- e. Trial preparation records;
- f. Confidential law enforcement investigatory records;
- g. Mediation communication;
- h. Records involving the collection a disbursement of child support;
- i. Peace officer, parole officer, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, or EMT residential and familial information
- j. Information pertaining to the recreational activities of a person under the age of eighteen;
- k. Most records of the child fatality review board;
- l. All records prohibited from release by state or federal law;

There are many other exceptions. Employees uncertain of the status of a record that has been requested should consult with the Shelby County Prosecutor's Office. When calling, the employee should specify whether there is a current public records request involving that record.

#### **H. COST OF COPIES OF PUBLIC RECORD.**

By law, departments may only charge actual costs for copies of public records. "Actual cost" means the cost of depleted supplies, records storage media costs, actual mailing and alternative delivery costs, or other transmitting costs, and any direct equipment operating and maintenance costs, including actual costs paid to private contractors for copying services. It does not include labor costs for the public employee to respond. Costs of copies for bulk commercial extraction will be provided as allowed by law.

#### **I. DISCIPLINE.**

Employees violating this policy may be subject to discipline, up to and including termination.

#### **J. CHANGES AND AMENDMENTS.**

This policy is subject to change without notice.