

Summit County CSEA Procedures Handbook

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Approved:

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The purpose is to provide Child Support Enforcement Agency staff working under the Prosecutor's office, a guideline on the Public Records Policy

PREFACE

As in most things, there will occasionally be exceptional cases where strict compliance with the procedure is unreasonable. Procedures cannot be written to anticipate every possible scenario. It is expected that workers will use professional judgement with exceptional situations. When an exception arises the situation and a proposed solution should be discussed with, and approved by, a supervisor. If a Supervisor is unsure of how to resolve the situation, then the Supervisor should discuss the case with his/her Administrator.

PROCEDURAL OUTLINE

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1.0 GENERAL

- 1.01 This Public Records Policy is adopted by the Summit County Prosecutor's Office in accordance with the applicable provisions of House Bill 9 (126th General Assembly), primary authority being Ohio Revised Code Chapter 149. This policy is not intended to be legal advice. It is the policy of Summit County Prosecutor's Office to strictly adhere to the state's Public Records Act as well as other state and federal laws
- 1.02 The Public Records Act evolved from the principle that Ohio's citizens are entitled to access the records of their Government. All exemptions to openness are to be construed in their narrowest sense and any denial of public records in response to a valid request must be accompanied by an explanation, including legal authority, as outlined in the Ohio Revised Code ("ORC"). If the request is in writing, the explanation must also be in writing. *O.R.C. Section 149.43(B)(3)*

2.0 RECORDS DEFINITION

- 2.01 "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 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. All records of the County of Summit are public unless they are specifically exempt from disclosure under Ohio and Federal law. *O.R.C. Section 149.011(G)*

3.0 E-MAIL

- 3.01 Documents in electronic mail format are records as defined by the Ohio Revised Code when their content is related to the business of the office. E-mail is to be treated in the same fashion as records in other formats and should follow the same retention schedules. *O.R.C. Section 149.011(G), and 1306.01(G)*

3.02 Public E-mail Accounts

- a. Records in public e-mail accounts used to conduct public business are subject to disclosure, and all officials, employees, or other representatives of the Summit County Prosecutor's Office are instructed to retain such e-mails that relate to public business in accordance with the Office/Department's records retention schedule ("RC-2").
- b. Records in Summit County Prosecutor's Office e-mail accounts that do not document public business are not public records and are not subject to disclosure. This policy of the Summit County Prosecutor's Office is that electronic mail is used for business purposes. *State ex rel. Wilson-Simmons v Lake County sheriff's Dept. (1998), 82 Ohio St.3d 37*

3.03 Private E-Mail Accounts

- a. Records in private e-mail accounts used to conduct public business on public property (i.e. using County computers) may be subject to disclosure, and all officials, employees or other representatives of this office are instructed to retain their e-mails that relate to public business.

4.0 AVAILABILITY OF RECORDS

- 4.01 It is the policy of the Summit County Prosecutor's Office that records, as required by Ohio law, will be organized and maintained so that they are promptly available for inspection and copying, except if legal review and/or redaction are required then the records shall be provided within a reasonable period of time thereafter. *O.R.C. Section 149.43(B)(2)*

5.0 ONLY NECESSARY RECORDS TO BE MADE

- 5.01 The Summit County Prosecutor's Office shall make only such records as are necessary to document the organization, functions, policies, decisions, procedures, and essential transactions of the Summit County Prosecutor's Office and to protect the legal and financial rights of the Summit County Prosecutor's Office and persons directly affected.

6.0 DISPOSAL OF OR DAMAGE TO RECORDS

- 6.01 All records are the property of the Summit County Prosecutor's Office and shall not be removed, destroyed, mutilated, transformed or otherwise damaged or disposed of, in whole or in part, except as provided by law or under the rules adopted by the County of Summit Records Commission.
O.R.C. Section 149.351(A)

7.0 RECORDS REQUEST

- 7.01 No specific language is required to make a records request. However, the requester must at least identify the records requested with sufficient clarity to allow the public office to identify, retrieve, and review the records. If it is not clear what records are being requested, the records custodian must ask the requester for clarification, and shall assist the requester in revising the request by informing the requester of the manner in which records are maintained by the office.
O.R.C. Section 149.43(B)(2)

7.02 Request Not Required To Be In Writing

- a. The requester may be asked to make the request in writing, to provide their identity, and to disclose the intended use of the information requested, but may be asked such questions only after it has been disclosed to the requester that a written request is not mandatory, that he/she does not need to provide his/her identity or that he/she need not disclose the intended use of the information requested.
O.R.C. Section 149.43 (B)(5)

7.03 Ambiguous or Overly Broad Request

- a. If a requester makes an ambiguous or overly broad request or has difficulty in making a request for copies or inspection of public records such that the public office cannot reasonably identify what records are being requested, the public office may deny the request.
- b. However, the Summit County Prosecutor's Office 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.
O.R.C. Section 149.43(B)(2)

7.04 Limitations of Records/Requests

- a. The Summit County Prosecutor's Office may not limit the number of public records that the public office will make available to a single person, may not limit the number of public records that it will make available during a fixed period of time, and may not establish a fixed period of time before it will respond to a request for inspection or copying of public records, unless that period is less than (8) hours.
O.R.C. Section 149.43(E)(1)
- b. However, the Summit County Prosecutor's Office may limit the number of records requested by a person that the office will transmit by United States mail to ten (10) per month, unless the person certifies to the office in writing that the person does not intend to use or forward the requested records, or the information contained in them, for commercial purposes.
- c. The scope of the word "commercial" should be narrowly construed and does not include reporting or gathering news, reporting or gathering information to assist citizen oversight or understanding of the operation or activities of government, or nonprofit educational research. *O.R.C. Section 149.43 (B)(7); and Section 109.03 of the Codified Ordinances of the County of Summit*

8.0 PROMPT/REASONABLE RESPONSE

- 8.01 For purposes of a response to a research request to a records request, “prompt” and “reasonable” take into account the volume of records requested; the proximity of the location where the records are stored; and the necessity for any legal review of the records requested and redaction of exempt information. *O.R.C. Section 149.43(B)(1)*

9.0 INSPECTION OF RECORDS

- 9.01 Public records are available for inspection during regular business hours, with the exception of holidays; weekends; or other days the offices are closed. Public records must be made available for inspection promptly. *O.R.C. Section 149.43 (B)(1)*

10.0 NOT REQUIRED TO CREATE OR RESEARCH RECORDS

- 10.01 The Summit County Prosecutor’s Office is not required to create new records by searching for and compiling information for existing records and any compilation of the information sought must already exist. *State ex rel. White v Goldsberry (1999), 85 Ohio St. 3d 153*
- 10.02 The Summit County Prosecutor’s Office is not required to research for a requester when the requester can inspect the records themselves. *O.R.C. Section 149.43(B)(1) and(2)*

11.0 COPYING OF RECORDS

- 11.01 Copies of public records must be made available within a reasonable period of time. “Prompt” and “reasonable” take into account the volume of records requested; the proximity of the location where the records are stored; and the necessity for any legal review of the records requested and redaction of exempt information. *O.R.C. Section 149.43 (B)(6)*
- 11.02 A requester seeking copies of the public record IS NOT permitted to make their own copies of the requested records by any means. This measure is to protect the integrity of the original document. *O.R.C. Section 149.43(B)(6)*

12.0 DENIAL OF RECORDS

- 12.01 Any denial of public records requested must indicate an explanation, including legal authority, setting forth why a request was denied. If the initial request was in writing, the explanation shall also be in writing. *O.R.C. Section 149.43(B)(3)*

13.0 EXEMPTIONS

- 13.01 Generally, the confidential nature of certain types of information or records precludes their release. Federal and Ohio law, however, provide numerous exceptions to the general rule that the disclosure of public records is mandatory. However, most of the exceptions do not, by themselves, prohibit the release of the prescribed records. Rather, these records merely are excluded from the general rule of mandatory disclosure.
- 13.02 Unless the Summit County Prosecutor’s Office can identify an exemption which clearly requires or permits withholding a requested record, it must disclose the record.
- 13.03 If portions of a record are public and portions are exempt, the exempt portions are to be redacted and the rest released.

14.0 REDACTION

- 14.01 "Redaction" means obscuring or deleting information that is exempt from the duty to permit public inspection or copying from the item that otherwise meets the definition of a "Record" pursuant to O.R.C Section 149.011 and 149.43(A)(11).
- 14.02 The employee of the Summit County Prosecutor's Office shall notify the requester of any redactions made, or should make the redactions plainly visible. A redaction shall be deemed a denial or a request to inspect or copy to redacted information, except if Federal or Ohio law authorizes or required a public office to make the redaction. (See Denial of Records 12.0). *O.R.C. Section 149.43(B)(1)*

15.0 MEDIUM

- 15.01 The requester may choose to have the public record duplicated upon paper, or upon any other medium, 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. *O.R.C. Section 149.43(B)(6)*

16.0 COSTS FOR COPYING PUBLIC RECORDS

- 16.01 Those seeking public records will be charged only the actual cost of making copies. Neither the cost of paper, ink, etc., nor the time used for gathering, reviewing or physically copying the records may be charged to the requester.
- 16.02 There is no charge for documents e-mailed as no actual cost is incurred. *O.R.C. Section 149.43(B)(7); Section 109.02 of the Codified ordinance of the County of Summit*

17.0 MEANS OF DELIVERY

- 17.01 Requesters may ask that documents be mailed by U.S. mail or by any other means. Requesters will be charged the actual cost of postage and mailing supplies. *O.R.C. Section 149.43(B)(6)*

18.0 PAYMENT IN ADVANCE

- 18.01 If records requests are responded to by U.S. mail or by any other means, the Summit County Prosecutor's Office may require requester to pay in advance the cost of postage, delivery fees and for supplies used for mailing and/or delivery of records. *O.R.C. Section 149.43(B)(7)*

19.0 REQUESTS BY INCARCERATED PERSONS

- 19.01 Under Ohio law, an incarcerated person may receive public records, but may only if the records concern a criminal investigation. The incarcerated person must also follow strict guidelines.
- a. The records must be "public records" which are not subject to an exemption from disclosure.
 - b. 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.
- 19.02 Courts have denied the public records requests of inmates because this procedure was not followed. *O.R.C. Section 149.43(B)(8)*

20.0 FAILURE TO RESPOND TO A PUBLIC RECORDS REQUEST

- 20.01 The Summit County Prosecutor's Office recognizes that the failure to respond to a public records request not only causes distrust in government but may also lead to legal consequences. *O.R.C. Section 149.43(C)(1) and (2)(a) and (b)*
- 20.02 If a requester feels they have been improperly denied public records due to the inability to inspect or to receive a copy of a record, the requester shall be advised that they may contact the Prosecutor's Director of Communications.
- 20.03 If the requester is still not satisfied, they shall be advised that the Ohio Revised Code provides a legal means for addressing their complaint.

21.0 RECORD RETENTION SCHEDULES (RC-2s)

- 21.01 Record retention schedules (RC-2s) are to be updated when necessary and are at the direction of the County of Summit Records Commission. The RC-2 needs to be easily understood by the public, who may have no knowledge of public records.
- 21.02 Each public office shall have available a copy of its current retention schedule (RC-2) at a location readily available to the public. *O.R.C. Section 149.38 (B) and 149.43 (B)(2)*
- 21.03 Please see the Addendum to this procedure to review the most recent, approved Records Retention Schedule.

22.0 RETENTION OF E-MAILS

- 22.01 E-mails shall be retained per approved record retention schedules (RC-2) and made available for inspection and copying in accordance with the Public Records Act.

23.0 POLICY INCLUDED IN EMPLOYEE HANDBOOK

- 23.01 The Summit County Prosecutor's Office public records policy shall be included in the Personnel Policies and Procedures manual or handbook. *O.R.C. Section 149.43(E)(2)*

24.0 ACKNOWLEDGMENT

- 24.01 The Summit County Prosecutor's Office shall distribute the public records policy to the employees of the Summit County Prosecutor's Office who have custody of the records of the public office and shall require that employees to acknowledge receipt of the copy of the public records policy. *O.R.C. Section 149.43(E)(2)*

25.0 POSTER REQUIRED

- 25.01 A poster that describes the Summit County Prosecutor's Office Public Records Request Policy shall be posted in a conspicuous place in the Summit County Prosecutor's Office and in all locations where Summit County Prosecutor's Office has branch offices. *O.R.C. Section 149.43(E)(2)*

26.0 ELECTED OFFICIALS TRAINING

- 26.01 The Summit County Prosecutor or their appropriate designees shall attend public records law training for three (3) hours for every term of office. The training must be approved by the Ohio Attorney General. *O.R.C. Section 109.43(B)*

27.0 AUDIT OF PUBLIC OFFICE

- 27.01 The Auditor of State, in the course of an audit of a public office, shall audit the public office for compliance of the public records law, including but not limited to, review of the policy, acknowledgment, poster requirement, and attendance of elected officials to required training. *O.R.C. Section 109.43; and O.R.C. Section 149.43(E)*