

Supreme Court of Ohio Response  
to Ohio Coalition for Open Government Public Records Analysis

We appreciate the opportunity to exchange information and perspectives with the Ohio Coalition for Open Government on the topic of open government. Open government is critical to the effective operation of democracy.

The role of the Supreme Court of Ohio in open government cases is to interpret and apply the public records access laws passed by the General Assembly. The Supreme Court is not free to use cases to legislate its own views on open government.

The OCOG analysis characterizes the outcomes of some of the Court's decisions on public records laws as favoring or not favoring open government. This characterization implies that the Court has the ability to change the laws passed by the General Assembly. If the General Assembly enacts a law that restricts public access to a certain class of records (for example, medical records), the Court simply cannot order the release of the records. The Court is bound by the basic principles of separation of powers to respect the enactments of the legislative branch of government on matters within its authority unless unconstitutional. As this Court stated in a recent opinion: "... the authority to legislate is for the General Assembly alone ..."<sup>1</sup>

It is also worth noting that the public records cases that come before this Court are often the most difficult ones. The cases where the law is clear are usually resolved before they reach the courthouse. The fact that the Court's justices often do not agree on the outcome of these cases makes this point.

We applaud the OCOG in its efforts to champion the cause of open government. However, to the extent that the analysis is meant to portray the Court as opposing open government, it is not fair. As is evident in the judicial branch's public access rules, this Court clearly has and continues to support open government and public access to the courts. That the Court may, on occasion, rule against a party seeking documents or access to meetings merely reflects that it is applying existing law adopted by the General Assembly to difficult cases. It does not reflect, as might be concluded, a philosophical opposition to the principle of open government. The Court is merely performing its duty to apply the existing law enacted by the General Assembly.

*Contact:*

*Bret Crow, Director  
Office of Public Information  
Supreme Court of Ohio  
614.387.9250  
Bret.Crow@sc.ohio.gov*

---

<sup>1</sup> State v. Bodyke, 126 Ohio St. 3d 266, 278 (2010)