



# Ohio Coalition for Open Government OPEN GOVERNMENT REPORT

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## We'll keep trying to create an expedited process for open meetings violations

By Monica Nieporte, OCOG President

I was encouraged by the Ohio legislature including a provision in the new state budget (HB 110) that would have allowed citizens and journalists to file an allegation of an open meetings violation directly with the Ohio Court of Claims.

While there has been much discussion of other provisions of the budget bill, legislators took a step for transparency by taking this action which could have been an important tool for citizens and journalists to contest suspected violations of open meetings laws.

Currently, if someone believes a meeting was held without proper notice, a vote was taken improperly or executive sessions are being called for reasons not specifically allowed by Ohio law, the only real remedy is to file a civil complaint in the Court of

*(continued, see open meetings, page 2)*

*In March, Ohio Attorney General Dave Yost released the 2021 edition of the Ohio Sunshine Laws manual, a one-stop resource for information on the Ohio Public Records and Open Meetings Acts. Created by the attorney general's Public Records Unit, the manual is updated annually with a goal of helping citizens and public employees understand open government laws. The Public Records Unit has also created a model public records policy for local governments to use as a guide when creating their own policies. The Ohio Sunshine Laws and other resources are available at [www.ohioattorneygeneral.gov/sunshine](http://www.ohioattorneygeneral.gov/sunshine).*

## Some governments return to in-person public meetings; others stay virtual

From The Dayton Daily News

Local government deliberations and votes once required to be held in-person in front of the public have taken place virtually for the past year because of efforts to limit gatherings amid the coronavirus pandemic.

The change was a double-edged sword for public transparency. It led many local governments to start streaming meetings online, allowing people to watch them from home. But it also limited access to those with the right technology, and sometimes technical glitches made meetings hard to watch or understand.

It also changed how public comments are handled. Instead of someone simply stepping up to a microphone to voice their views on a matter before elected officials,

many governments required comments to be emailed before the meeting so they could be read aloud by officials.

Jack Greiner, a Cincinnati attorney who specializes in media law, said he's not aware of any particular governments that have faced a backlash over the way they conducted meetings during the pandemic, though some likely faced technological issues.

"On the upside, the technology in some respects opens up the process in a way that permits more public participation," he said. "It will be interesting to see what happens going forward."

Ohio's open meetings law requires public bodies to meet in-person in a public setting.

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# Ohio open government bill passes Senate and moves to House

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Common Pleas where the alleged violation occurred. This process can be expensive and long. And in the meantime if violations are occurring, they typically keep continuing while the case makes its way through the docket.

Unfortunately, this provision — which open government allies worked hard to lobby for during the past two general assemblies — was vetoed without any forewarning by Governor Mike DeWine. We did not anticipate the opposition from the governor because as we have made our way around the Statehouse, giving public testimony in committee hearings, we have not had any opposition. We even tweaked the language in response to a couple of concerns voiced late last year by the County Commissioners Association of Ohio but in the end everyone seemed satisfied that allowing these type of disputes to be mediated by the Court of Claims was a positive step to ensuring accountability.

This became especially important midway through the process when the COVID pandemic hit and many public bodies changed the way they held meetings either by limiting attendance or holding the meetings virtually. Having an expedient way to seek relief if a violation occurs became more important because of the emergency we have all been living in.

A few years ago, the state developed an expedited process for public records violations. This process works extremely well. It is inexpensive for the person alleging the violation to pursue and the Court of Claims makes its rulings in an expeditious manner. Interestingly, the results have been about 50/50 in favor of the person making the complaint versus the government body refusing to release the record. I expect the outcome to be similar with open meetings allegations. Sometimes the person making the complaint will be correct and the body will be advised their action was improper and sometimes the body's actions will be justified.

I applaud our legislature and State Auditor Keith Faber, who helped kick off this process when he was in the Statehouse and who has supported this effort, for being leaders in this area as many states do not have any kind of expedited process for either public records or open meetings violations. I hope that we will be able to overcome the



**Nieporte**

governor's concerns and get this back on the table for further consideration.

Governor DeWine has typically been pro-transparency and supportive of local journalism. We look forward to speaking with his office further on this important matter.

## OCOG files amicus brief in free speech case

OCOG recently filed an amicus brief in the case M.R. v. Niesen, a case where the Ohio Supreme Court is reviewing a prior restraint ruling by a lower court. The case was originally brought by a Cincinnati police officer against people criticizing the officer's on-duty conduct. In a particularly bad ruling, the judge overseeing the case ordering that the officer's name be withheld from the court's official record.

The ruling could be interpreted as preventing anyone, including the media, from mentioning the officer's name in coverage of lawsuit, even though the officer was the one who initiated the lawsuit.

This particular order has already caused a chilling effect on free speech — while the Cincinnati Enquirer reported the officer's name in its coverage of the case, the local CBS affiliate, WKRC, delaying in reporting the officer's name until well after the case was filed.

OCOG argues in the amicus that given Ohio's strong protections for the freedom of speech and of the press, the Supreme Court should clarify that immediate appellate review of unconstitutional prior restraints is always available — if not by direct appeal then by seeking a writ of mandamus or prohibition.

*(continued, see public notices, page 3)*

## Without public notices in newspapers, the public will always be the last to know

continued from page 2

Did you ever wonder why government entities have to put a legal notice into the newspaper?

For one, it is a method of properly notifying interested parties that something is about to happen. For instance, the city advertises for asphalt bids for the parking lot behind city hall. Any interested contractor who would like the job can see the specifications of the bid and how to apply to potentially get the work.

This keeps things honest for the taxpayers in a few ways. It creates competition, and likely a lower job cost, than if the city officials just picked up the phone and called the first contractor who came to mind. It also helps resolve any real or perceived conflicts of interest. Let's say the mayor's brother just so happens to own an asphalt business. You can see why giving everyone a fair chance to submit a bid is even more important in that circumstance.

Another important reason for newspapers to be the platform by which the government gives notice is the newspaper is a disinterested, neutral party. Let's say the Ohio Department of Transportation wants

to take some property by eminent domain to widen a road or the county prosecutor's office decides to file to take someone's property for unpaid taxes. ODOT putting a blurb on its website or the prosecutor post a notice on his does not do the job. You'd have to be looking at their websites on a routine basis to catch that the notice was even posted and then there is a question of where on the website is the notice? Is it easily visible or do you have to know what you're looking for to even find it? The government, in both of these examples, is the party doing the taking. They are not neutral nor are they disinterested in the outcome. Would there be a temptation to bury notices they did not want to attract attention to?

Thankfully we currently don't have to worry about such questions because Ohio public bodies are still required to give notice of such activities in newspapers – to be found all in the same place, every time and to be seen not just by people who are anticipating the notice but to those passively reading and who may not have known to be looking out for it.

I like to equate it to the difference between online shopping and going to the mall or car dealership in person. If you know exactly what you're looking for, a search engine based system is a time saver. But what about the time you walked on to a car lot and found a great new ride because a vehicle you wouldn't have specifically thought you were looking for caught your eye? Or that new chair for your living room?

There is value in not making people have to constantly search for this information – which if it isn't in the local paper could appear on one of any dozens of government websites.

It's more fair to both parties involved. It just keeps things cleaner. It prevents people with bad motives from taking shortcuts and manipulating the outcome. It also makes it harder for people to allege favoritism when everything was done out in the open by a third party who doesn't have a dog in the fight.

It can bring more bidders and keep competition lively. This could fetch a higher price for the county or bank for a property or could result in a lower project cost for a road repair.

Public notices have been running in newspapers since the first editions were printed on our shores. There is just no comparable alternative that provides as much fairness, visibility or creates such a permanent record that's archivable and searchable by everyone. Unless someone comes up with one, there is no good reason to take this important government watchdog role away from newspapers.

*Monica Nieporte is the president and executive director of the Ohio News Media Association and president of the Ohio Coalition for Open Government. Prior to joining ONMA and OCOG Nieporte served as the president and publisher of the APG Ohio media group in Athens.*

## Some governments return to in-person public meetings; others stay virtual

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Ohio lawmakers last year passed a law suspending those rules during Gov. Mike DeWine's COVID-19 emergency declaration. That law expired on July 1.

The temporary rules allow virtual meetings. They still require public notice of meetings. Public bodies must provide public access to virtual or electronic meetings. That access can be provided by livestreaming, local radio or TV broadcast, or other electronic means.

Dayton Public Schools (in March) returned to in-person meetings.

"If we require our students and staff to come back to work, it seems we should do what we're preaching," said DPS board President Mohamed Al-Hamdani.

They are wearing masks, spacing out members of the audience and have

glass partitions between board members on the dais. The school board streamed meetings online before the pandemic, but it added ways to watch over the past year, like on Facebook, and will likely continue doing that, Hamdani said.

During virtual meetings, they asked people to email public comments before the meetings and they read them aloud.

"It's a good idea to listen to the public to get a pulse of what's going on in the district, what's going on in the community, how people are feeling," Al-Hamdani said.

Other governments meeting in-person include Greene County commissioners, Beaver Creek, Miamisburg and West Carrollton.

Some local governments have faced scrutiny in recent years over transparency relating to their meetings. The Lakota Local School District in

Butler County has been sued by a former parent claiming the school board doesn't properly provide notice or maintain records of meetings.

School district officials say their attorneys are reviewing the allegations.

A judge last year ruled that the Bellbrook-Sugarcreek school board violated open meetings laws in 2018 and 2019 by going into improper closed executive sessions and deliberating via text and email.

"Secrecy in any relationship destroys trust — a friendship, a marriage or a business partnership. Transparency builds trust," Yost said in a statement along with the updated manual. "More now than ever, we in government need to build trust with those we serve. It starts with openness in public decision-making and the records that document it."

## Open Government Commentary

# Documents behind bars: The experience of a writer versus the state of Ohio

by Dennis Whitehead

Between December 1965 and December 1966, Cincinnati was gripped by fear and racial tension stoked by political pressure, local media and the changing times rooted in a series of strangulation murders and sexual assaults. In April 1967, Postel Laskey, Jr. was convicted of first-degree murder and sentenced to death in the August 1966 murder of 31-year-old Barbara Bowman. Commuted to life, Laskey spent 40 years in custody of the Ohio Department of Rehabilitation and Corrections (ODRC) without hope of parole. Laskey died in Pickaway Correctional Institute in 2007.

This sojourn began as research for a book on the Cincinnati murders, the city of my birth. Chapters were written telling the stories of the victims but Laskey's life, the majority spent in prison, remained a mystery.

Correspondence with the ODRC was positive and collegial, yielding interesting results. An inquiry for parole records was limited as the ODRC blocked release of public comments driven by a succession of Hamilton County prosecutors in advance of Laskey's periodic parole hearings. The appearance of widespread public hostility to the prospect of parole for Laskey weighed heavily in repeated parole board denials.

At this point, ODRC and AG lawyers entered the picture, and my research ground to a halt. The only option to the impasse was a lawsuit against the ODRC in the Ohio Court of Claims. The cost for the filing was only \$25.00 but what ensued over more than a year was far more costly, and not just in dollars.

Two judges, a special master, a mediator, three mediation sessions, and three attorneys representing the AG's office and ODRC, and this self-represented writer.

My familiarity with the Federal FOIA process relaxed my approach to litigation, an opening miscue. In spite of countless FOIA denials and excessive redactions, I've never pushed a case into court as the FOIA system offers layers of appeal and re-examination before legal action becomes the last resort.

Federal agencies are staffed with security-classified records professionals,

including FOIA public liaisons, who review your request. If you receive an unsatisfactory response the next step is not court, rather an independent administrative appeal. And, if their review does not meet your expectations, mediation provided by the Office of Government Information Services of the National Archives is available. Again, a review by records professionals.

In Ohio, those seeking public records have no such appeals process. You can start in a local common pleas court in the county where the records are located or the Ohio Court of Claims, with an additional option of filing a mandamus lawsuit but this will stick with my experience with the Court of Claims.

The bedrock principle of the Ohio Public Records Act is broad access to public records where doubts over access are resolved in favor of disclosure. Unlike common law and FOIA where privacy rights do not extend into death, Ohio statutes muddy the issue of the privacy rights of the deceased and public access their public records.

*Ohio Sunshine Laws 2021: An Open Government Resource Manual* is a good starting point for procedural research but it does not address everything you need to know. The same goes for the Court of Claims public records website ([www.ohiocourtofclaims.gov/public-records.php](http://www.ohiocourtofclaims.gov/public-records.php)). The book *Access With Attitude*, written by First Amendment attorney David Marburger and journalist Karl Idsvoog, is a must-read for understanding Ohio law and public records.

Unable to afford attorney fees that can run into the tens of thousands, I went wholly on my own into the wilderness. I would suggest consulting with a lawyer knowledgeable in Ohio public records law before filing.

If you have familiarity with Federal FOIA procedures, leave them behind as they have nothing to do with Ohio public records and sunshine laws. In fact, citing FOIA statutes can be counterproductive to your appeal.

Familiarize yourself in the procedures and formats of the legal process and do not expect assistance from the court. Carefully study statutes covering the public records area you are researching. Be prepared, they can be confounding

and incomplete leaving them open to wide interpretation. And, research precedent for court cases covering your issue. Study Ohio Revised Code (RC) 149.43 covering public records and, if your research involves ODRC records, look to RC Section 5120.21 for guidance.

RC 5120.21(F) makes no distinction being living and dead incarcerated individuals, and fails to clearly define records of those no longer in ODRC custody or supervision. The 1973 case, *Stewart v. Trumbull*, states, "If the General Assembly intended for R.C. 5120.21(F) to expire upon the death of an inmate, then they must expressly indicate their intent to lift the shield of confidentiality..."

In November 2020, the Ohio Supreme Court decided against media access to public records in *CNN v. Bellbrook-Sugar Creek Local Schools*, a chilling case for open records advocates. CNN concerns access to school records of a deceased mass shooter, denying access citing the Ohio Student Privacy Act. Regardless, state attorneys included it in one of their objections in spite of having nothing to do with ODRC records.

In my case, documents held by the ODRC cover the 40 years, plus two from a previous conviction, that Laskey served, concluding with his death in 2007. During mediation, ODRC provided a small portion of their records but the vast majority of that release were blank pages. ODRC classified the rest as "medical records," exempt from public disclosure. Precedents stand to counter blanket exemptions but they went unaddressed by the court. At no time was there a review of the document collection by a public records access professional. Only the state attorneys and court had access to the documents.

Once you file the complaint on your own your status is that of pro se, Latin for "one's self," and you will be known going forward as Requester. Personally, I was offended by court references to me using only my last name, rather than the proper titles afforded other participants.

After filing the initial complaint, the case was referred to a mediator. Over the course of three mediation sessions woven

(continued, see **documents**, page 5)

# Editorial: Tax-list bill would limit transparency

## Editorial from The Tribune Chronicle

The majority of property owners in the Mahoning Valley and in Ohio responsibly pay their property taxes on time.

Unfortunately, not everyone who owns property is responsible.

Twice annually the Tribune Chronicle publishes pages and pages of delinquent property taxes owed on thousands of parcels of land in Trumbull County. The goal of publishing this delinquent tax list, required under Ohio law, of course, is to inform the general public that the owners of the listed parcels have not paid their property taxes and thus their property is in danger of being confiscated by the government.

Further, publication in the newspaper of record has served local government well by triggering payment of these delinquent taxes. We know it works because when the list is published a second time, it always is significantly shorter — an indication that many property owners reacted quickly and paid their overdue taxes. Frankly, some may not even have realized they were delinquent until they read it in the newspaper or some acquaintance saw it and let them know.

The most critical reason for requiring the publication of this list in the newspaper is the high level of transparency and information that this list brings — not just for county residents and neighbors, but more importantly, for the property owner.

You see, without this notification, it's quite possible that a property owner may not even realize he or she is in arrears and could be facing confiscation of the property.

Now, there is a very real possibility some of this transparency is about to dissolve.

The Ohio House voted unanimously (in September) to approve a bill no longer requiring county auditors to publish this delinquent tax list in newspapers more than once. Under the legislation, the initial list still would have to be published in a newspaper, but after that, county auditors could choose to make the second list available online.

We and the Ohio News Media Association believe eliminating even one required publication in the newspaper of record starts us down a slippery slope of removing required transparency that keeps the public informed.

Under the new legislation, if a property owner who is about to lose his or her property to foreclosure happens to miss the first notice in the newspaper, he or she may never know to go looking online for the information. At a time when many Ohioans are suffering extreme economic hardship, it is very concerning to see lawmakers seek ways to reduce public awareness that the government may seize their property.

Further, these legislative moves stand to reduce checks and balances that come with local government officials providing

these lists to an outside entity — the newspaper — for publication.

Monica Nieporte, president and executive director of the Ohio News Media Association, testified in May at a House committee hearing that “such a move would create problems for Ohio taxpayers” because “by placing these notices in a newspaper we provide a credible and impartial record to taxpayers. Further, this guarantees due process and avoids creating a conflict of interest for governmental” entities.

Newspapers reach thousands of readers every day. What happens when this obligation is removed? Few residents would search government websites regularly in an effort to see if they might have overlooked a property tax bill, not to mention that so many Ohio residents still do not have easily accessible internet access.

Finally, in the name of fairness, shouldn't the shortened list, in which names of those who paid their bills after the first newspaper publication are removed, be reflected in a second newspaper publication?

Tax delinquency is a very serious problem, and law-abiding residents who pay their taxes on time have the right to be notified if they missed a payment in error.

We urge Ohio senators to vote no, and we urge the governor to argue against passage, and if necessary to consider a veto on this bill that is just one more step to allowing government to operate in the dark.

## Documents behind bars

continued from page 4

into the case, little was accomplished as the state's attorneys managed to draw the focus to the issue of medical records rather than to the overall existence of records, including the initial parole records. Conference calls with three attorneys - AG, ODR and mediator, not a public records expert, were pleasant but it was clear that I was not in the club.

Mediation by a lawyer unfamiliar with public records issues is the result of a public records appeal landing in the judiciary rather than to the review of security records professionals. Decisions made in such circumstances can have lasting consequences as precedent in future appeals.

The three mediation sessions did result in the creation of an index, a “privilege log,” giving an idea of ODR holdings. Once it was acknowledged the state was not going to further budge, back to the court it

went. As the Ohio sunshine manual notes, “if mediation is unsuccessful, proceed on a ‘fast track’ resolution process that is overseen by a special master.”

I filed the complaint in December 2019 and was not decided until May 2021 - not exactly a fast track. No one informed me of the judge assigned to the case had passed away. Judge Patrick McGrath had already issued a Decision and Entry into the case before he died of Covid in December 2020, one of three Ohio judges stricken in the pandemic. The case was assigned to a retired judge whose writing did not address any issue in the case, other than “proof of service.”

I still do not know where I went astray with “proof of service.” The court pointed to Civ.R. 4, the Ohio Rules of Civil Procedure, but I cannot find anything that outlines Court of Claims “proof” but it dealt with certified mail. At each electronic filing into the case, a PDF copy was immediately emailed to the attorneys, seeming compliance with Civ.R. 4.

The AG's sunshine report does not mention “proof of service” but it was my final undoing.

This was not my only stumble over procedural issues. Filing into a case is done via an initially confusing electronic system. Early in the case, three filings weren't entered, my bad, I'm sure. Another was a motion filed in excess of an unseen maximum page count. Fortunately, the special master permitted me to edit the document to the mandated length.

Ohio public records appeals are portrayed as a \$25 fee with a neat course through review and decision. Reality can be another matter.

*Dennis Whitehead is a writer in Arlington, VA continuing his work on the crimes that gripped Cincinnati in the mid-60s. He is the author of Love and Sacrifice, the stories of a father and son killed in WWII.*

## Open Government Commentary and Editorials

# Cedar Point above the law?

By Tom Jackson  
The Sandusky Register

Cedar Point officials continue asking for special treatment under state law, ignoring its obligations to properly track and report crime and other activity that happens at the park.

"If you would provide the Register's legal counsel's contact information, I can connect them with our legal team for further clarification," park spokesman Tony Clark wrote the Register in response to records requests the Register filed with the park.

The state's Public Records Act (ORC 149.43) does not require anyone, including newspapers, to engage the services of an attorney to make a public records request. The Cedar Point Police Department is required to comply with the law the same as any other police agency in the state, according to a 2015 Ohio Supreme Court ruling.

The park's general manager, Carrie Boldman, hung up when a reporter called her. Calls to Jason McClure, Cedar Fair's corporate vice president for park operations, went immediately to voicemail. Boldman and McClure have not responded to written requests to them asking that the park comply with the law.

### Long time coming

A bipartisan bill requiring Cedar Point's police force to make its reports public failed in 2014 in the Ohio General Assembly after getting little support. But the legal issue was settled in 2015 when the High Court ruled that private police records are public records.

Mike DeWine, then Ohio's attorney general and now Ohio's governor, submitted a friend of the court brief agreeing that private police records should be public records. DeWine said allowing police to operate in secret can have "serious" and "irreparable" consequences. The governor hasn't changed his mind, a spokesman said.

Despite the fact that the legal issue has been settled, Cedar Point has refused to release reports on a Top Thrill Dragster accident Aug. 15 (2020) that left a Michigan woman critically injured. She was hit in the head by a piece of metal that came loose from the now-

closed roller coaster. Her family issued a statement saying she was "fighting for her life," and they asked for privacy.

The Register was able to obtain Cedar Point's initial report of the accident from the state, which is investigating it, via a records requests to it. The state initially responded it was not the correct party to release the report. A few days later, the report was released after the Register pressed state officials to either provide a copy of it or cite the exemption in the law that allowed it to be withheld.

But the park now is refusing to properly respond to other records requests sent the park by the Register. The newspaper asked park officials to come into full compliance with state law by releasing daily police reports in the same manner that other police agencies provide the public this information.

### Here's why

House Bill 429 by state Rep. Heather Bishoff, D-Blacklick, and state Rep. Mike Henne, R-Brookville, was introduced in February 2014 but didn't make it out of committee. It would have made records of private police forces at amusement parks, hospitals, colleges and other organizations public records, subject to Ohio's public records laws.

The Ohio ACLU backed the bill, saying that it fixes a "glaring omission."

"More than 800 privately employed police officers in Ohio are authorized by the state to investigate crimes, carry handguns and make arrests," the ACLU wrote. "However, unlike officers employed by public departments, they are not required to provide records to the public."

Henne, who served until 2019, told the Register his measure failed after getting no support from leadership. He said he believed if private police officers are allowed to make arrests, the records should be public.

"I'm a big proponent of open doors," he said.

In 2015, the Ohio Supreme Court resolved a battle between a student newspaper and the Otterbein University police force, ruling the campus police were subject to public records laws. The 4-3 ruling in *Schiffbauer v. Banaszak* was a victory for Ohio's then-attorney general DeWine, who filed a brief arguing that

Otterbein's records should be made public.

"Like other law enforcement agencies, it clearly meets the definitions of a public office, the functional equivalent of a public office and an institutional person responsible for public records, any one of which renders its law enforcement records subject to the requirements of the Public Records Act," DeWine's brief said. "This status is clear, and the consequences of any Ohio police department operating to the contrary are serious and potentially irreparable."

### Don't ask, don't tell

Clark, the Cedar Point spokesman, won't even provide public information about the Cedar Point Police Department, including how many officers it has or how many carry guns. Instead, Clark again requested contact information for the Register's legal counsel. Anyone is entitled to public records, and state law does not require the public to engage the services of an attorney to obtain records.

Sandusky police Chief Jared Oliver said he doesn't know how many officers Cedar Point police has, but about 10 were sworn into office this year by Sandusky's city manager.

The park's department is authorized by 127.04 of the Sandusky city code, which authorizes a private police force commissioned by the city manager and says such private police officers must get the same training as other police officers.

Oliver said Sandusky's force does not supervise the Cedar Point police or receive Cedar Point's police reports.

But Oliver said a Sandusky police officer is stationed at the amusement park all the time the park is open. When an arrest needs to be made, the Sandusky officer normally makes the arrest, and a Sandusky police report is generated. That report is a public record, like all Sandusky police reports, Oliver said.

In the case of the Top Thrill Dragster accident, the Sandusky officer on duty heard radio traffic and came to the scene but had little involvement, Oliver said.

Oliver said he often talks on the phone with Ron Gilson, the chief of Cedar Point's police.

"We have a very good working relationship," Oliver said.

## Open Government Commentary and Editorials

# Public records allow Ohioans to ferret out fact, call out fiction

by Randy Ludlow, Columbus Dispatch

*Without information and knowledge the blessings of free government cannot be long continued. — Thomas Worthington*

Ohio's sixth governor (1814-1818) was an enlightened man.

Worthington's words are etched in glass in a framed display in the crypt of the Statehouse, a back-lit reminder of the importance of the citizenry's right to know.

Amid so-called alternative facts and a divisive dialogue often consumed with competing claims of truth, public records provide a basis for ferreting out fact and calling out fiction.

"Transparency in government processes and decisions and the public having access to the records related to those decisions is increasingly important," said Monica Nieporte, executive director of the Ohio News Media Association.

"There is so much rumor and disinformation, particularly on cable entertainment talk shows and on social media, that it is important local journalists and citizens have the ability to find the facts and determine the truth of a situation," she said.

As a one-time newspaper reporter, Ohio Attorney General Dave Yost has a long-time appreciation of sunshine and its role in enabling public oversight of government.

"Secrecy in any relationship destroys trust — friendship, a marriage or a business partnership. Transparency builds trust," Yost said. "More now than ever, we in government need to build trust with those we serve. It starts with openness in public decision-making and the records that document it."

To mark this year's Sunshine Week, Yost's office released the updated 2021 version of the Ohio Sunshine Laws manual or so-called "Yellowbook," a user's guide detailing Ohioans' rights to obtain records and attend meetings.

While it has shortcomings, and public officials too often are fond of hindering record requests when any doubts legally must be resolved in favor of disclosure, Ohio's sunshine laws are more expansive than in many states.

It can be difficult, however, to navigate the complexities of a Public Records Act

that began in 1963 with one exception labeled (a) — personal medical records — and now has exemptions lapping the alphabet for a second time to hit (mm).

More than 330 other classes of records are separately labeled off limits and are unavailable to the public.

The playing field between citizens who can't afford to hire lawyers and tax-paid lawyers who represent governmental entities was at least partially leveled in 2016 with creation of a public records complaint program in the Ohio Court of Claims.

For a \$25 filing fee, Ohioans can seek a legal review of cases in which government withheld public records, with the process including mandatory mediation before any potential ruling by special master Jeff Clark, who has handled hundreds of reviews.

About 70% of the time, the process leverages loose public records that have been withheld, with nearly half of the cases resolved in mediation. About 30% of complaints are filed against municipalities, with state agencies attracting 18%.

Stemming from the COVID-19 pandemic, the Ohio Department of Health has seen at least seven complaints in the Court of Claims over denied records, such as refusing to release names and addresses from its death-certificate database. The state contends the information sought by The Dispatch is protected health information,

even though it appears on publicly available death certificates.

"They seem to be rather protective of their data," said Cincinnati lawyer Jack Greiner, a Sunshine Law specialist who represents The Enquirer in seeking records about long-term care deaths, which the state does not list to specific nursing homes and says it does not record.

Too many public offices, Greiner said, are overly protective of their public records when they are merely custodians for the people. "It's almost like they feel this public information is proprietary, a trade secret, when it is not," he said.

The coronavirus pandemic, in one sense, has fostered increased public access to meetings of governmental bodies amid limitations on mass gatherings.

Under a law passed last year, elected officials can meet virtually online, instead of in person, during a public health emergency as long as members of the public can observe to meet the requirement that meetings be open to all.

In-person meetings of public bodies that once perhaps attracted a handful of people to attend now can easily be observed remotely by dozens from their homes.

## Support OCOG by becoming a member today

The need for the Ohio Coalition of Open Government (OCOG) has never been greater. The need for your support of OCOG has also never been more urgent. Don't take a chance that open government issues in Ohio could be curtailed or harmed. Join OCOG today!

To join OCOG, see the membership information on the back cover of this issue of the Open Government Report. You can also go to [www.ohioopengov.com](http://www.ohioopengov.com) for more information and to apply. And don't forget that OCOG's website is continually updated with news and information about Ohio open government issues.



# How to file a public records complaint through the Ohio Court of Claims

Ohio’s public records mediation process, which went into effect in 2016, continues to be a success. A large number of open government cases have been favorably settled in the last few years, with the mediation process offering Ohio citizens a low-cost and timely process to seek the release of public records when government entities deny their initial request.

To use the public records mediation process, follow the chart below.

To receive this illustration as a free 8.5 x 11 size print copy or PDF, email OCOG’s Jason Sanford at [jsanford@ohionews.org](mailto:jsanford@ohionews.org).

## START HERE

Go to [www.ohiocourtclaims.gov/public-records.php](http://www.ohiocourtclaims.gov/public-records.php)

If staff attorney contact with the public agency doesn’t resolve the problem, your complaint will be referred for formal mediation. If mediation fails the court will make a ruling, with both sides retaining appeal rights.

8

Staff attorney will contact the public agency for an explanation of why your original records request was denied. This contact frequently resolves the problem.

7

If your complaint meets legal requirements, a court attorney will review your request and contact you.

6



### Court of Claims Public Records Process

1

Download the Public Records Access Formal Complaint form.

2

Complete the form, providing as much supporting information as possible.

3

Submit the form by either mail or online at [www.ohiocourtclaims.gov/efile.php](http://www.ohiocourtclaims.gov/efile.php) and pay \$25 filing fee.

4

5

The Court of Claims staff will determine if your complaint meets minimum legal requirements. If complaint doesn’t meet minimum requirements, staff will either return it to you so you can correct any errors or summarily dismiss it.



**Ohio Coalition for Open Government**

*Working to strengthen and support open government and public access*

# Dispatch legal battle sought to maintain open access to public records

By Alan Miller, Columbus Dispatch

A victory for Ohioans came on (June 8) in the form of a recommendation by a Ohio Court of Claims special master who said that public records being sought by The Dispatch are indeed public records and that the Ohio Department of Health needs to stop withholding them from public view.

Health department officials have been stonewalling this request for more than a year.

Beginning on April 20, 2020, Randy Ludlow, then a reporter for The Dispatch, made requests to the health department for portions of the department's Electronic Death Reporting System database.

At that time, deaths attributed to COVID-19 were spiking, and Dispatch reporters wanted to better understand who was dying and where. The "where" part of that question was particularly important because we knew that nursing homes were hot spots for COVID-19 deaths, and we wanted to be able to report more details about those deaths.

The Ohio Department of Health initially denied the requests, but later downloaded and delivered all of the data Ludlow requested, except the names and addresses of the people who had died.

The state database of death certificate details is a public record and has been public for decades in Ohio – including names, ages, addresses and causes of death. We obtained copies of that database annually for many years to help

inform our reporting on health issues, in particular.

To be clear, we had no intention of publishing lists of names and addresses of people who had died. We wanted to find out more about who was dying and where. And we wanted to know this in part because many of you wanted to know the same things, and you asked us to get the details. We couldn't do that reporting without names and addresses.

On Jan. 26 of this year, Ludlow made the final, comprehensive request at issue in our court action:

"Please provide a copy of the Electronic Death Reporting System database – in digital spreadsheet form – of all death certificates delivered to the department from March 1, 2020, to Jan. 26, 2021 by all local health departments in the state.

"We acknowledge that the department has provided a copy of the database – except for names and addresses, which it insists are exempt from release – and file this request to update the dates for which the database is sought. We continue to contend that the names and addresses in the death certificate database are public record and again seek their release."

On Jan. 28, at my request, Ludlow, who is a longtime champion of open access laws and has since retired from The Dispatch, filed a complaint in the Court of Claims saying that ODH was denying access to public records in violation of state public records laws.

ODH then argued that the records request was "overly broad," because it

claimed incorrectly that the request was for an entire database. It also said that the request would require ODH to do a records search outside of the scope of the public records law, which also was not accurate, and that the records being sought are protected health information, which is patently false, given that the department has routinely provided the same information to anyone who requested it.

In his recommendation in favor of Ludlow's argument, Court of Claims Special Master Jeff Clark wrote that "the Ohio Public Records Act (PRA) requires copies of public records to be made available to any person upon request. The state policy underlying the PRA is that open government serves the public interest and our democratic system. To that end, the public records statute must be construed liberally in favor of broad access, with any doubt resolved in favor of disclosure of public records."

Further, Clark wrote that, as ODH's record copy of Ohio death certificates, the database we requested is "the electronic equivalent of a file cabinet of physical death certificates," and that any person may obtain a copy of any death certificate from the database, which ODH prints out and certifies. And there is no limitation on who may obtain death certificates, or for what purpose.

Clark concluded that the court should order ODH to provide the records requested by The Dispatch.

## Public notices booklet available

One of the critical components of an open government are timely public notices published in newspapers, where readers know to look for them. Public notices inform citizens of the everyday activities of government. From government spending to developing new policies, it is important for people to be informed of actions taken by public officials that affect citizens' everyday lives. Public notices are essential to a democracy and an informed citizenry. Without public notices, citizens cannot properly and adequately make informed decisions.

The Ohio News Media Association runs the state's official public notices website at [www.publicnoticesohio.com](http://www.publicnoticesohio.com) at no cost to the citizens of Ohio. This website reprints all the local and statewide government notices published in newspapers across Ohio.

To learn more about why public notices are so important, go [www.publicnoticesohio.com/Public-Notice-Law.aspx](http://www.publicnoticesohio.com/Public-Notice-Law.aspx). On that page you can also download a brochure explaining the complete history of public notices in our country and why our democracy couldn't exist without them.





# OHIO ROUNDUP

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## Gov. Mike DeWine, Ohio Redistricting Commission members can be questioned in gerrymandering lawsuits, Supreme Court rules

*From The Columbus Dispatch*

Plaintiffs in the three pending redistricting lawsuits will be allowed to question Gov. Mike DeWine, Senate President Matt Huffman and the other members of the Ohio Redistricting Commission despite requests from their attorneys, the Ohio Supreme Court ruled (October 7).

Several groups including the League of Women Voters of Ohio and National Redistricting Action Fund have sued the commission after it approved new state House and Senate district maps they say violate new rules in the Ohio Constitution.

The Ohio attorney general, representing DeWine, LaRose and Faber, had pushed back on requests for depositions. Attorneys for Huffman and Cupp, the state's top two legislators, had argued they didn't need to cooperate with any discovery.

Justice Pat DeWine, the governor's son, has not recused himself from the case. He concurred in the decision to allow depositions but would have pushed back the deadline to respond to discovery-related by three days.

The plaintiffs accuse the panel of unconstitutional gerrymandering in drawing and approving maps that preserve a Republican supermajority in both chambers. The two Democrats on the panel, Sen. Vernon Sykes and Rep. Emilia Sykes, both of Akron, voted against the maps.

The lawsuits argue the maps don't correspond to the statewide preferences of voters, a requirement added to the

Constitution in 2015. The votes case in recent statewide elections average about 54% Republican and 46% Democratic, while the approved maps gave Republicans between 67% and 69% of legislative seats.

If the Ohio Supreme Court finds violations, justices will ask the commission to amend their maps. If more than six House districts or two Senate districts need to be amended, the map is declared invalid and the commission must draw a new one.

## Cedar Point case going to mediation

*From The Sandusky Register*

**Editor's Note:** For more information, see column by Tom Jackson on page 6.

The Register's open records case against Cedar Point's police department has gone to mediation at the Ohio Court of Claims in Columbus.

The Register filed its complaint on Sept. 15. The Register's executive editor, Matt Westerhold, contends the police department must make its reports public, as other police departments in Erie County do. The Ohio Court of Claims deals with disputes over compliance with Ohio's open records law.

Jared Arnold, a judicial staff attorney at the Ohio Court of Claims, is handling informal mediation for the case, attempting to resolve it.

If the informal efforts fail, the case will go to formal mediation with each side pleading its case to a mediator. The mediator will then issue a ruling.

If that doesn't resolve the dispute, the case goes to a special master, Jeff Clark, who will make a recommendation to a judge. The judge then will issue a ruling.

In his complaint, available online, Westerhold states that Cedar Point's police chief, Ron Gilson, has not responded to requests for police reports.

The paper has been seeking police records since August. On Aug. 15, Rachel Hawes, 44, of Swartz Creek, Michigan,

was waiting in line for Top Thrill Dragster when a piece of metal apparently flew off the ride and hit her in the head.

Hawes suffered a serious injury. Her family said in late August that she remains in critical condition, and there's been no public update since then. The ride has been closed for the rest of the season.

The Register has sought the Cedar Point Police Department's incident report on the accident and also has asked for the police department to supply daily incident reports.

## RTA violating Ohio law by barring public from board meetings

*From Cleveland.com*

The Greater Cleveland Regional Transit Authority is violating Ohio's Open Meetings Act by refusing to allow the public to attend board meetings in-person, according to a First Amendment attorney and a good-government expert.

No members of the public were allowed to attend RTA's Board of Trustees meeting on Tuesday, which was its first public board meeting since the July 1 expiration of a temporary pandemic law that allowed for meetings to be conducted remotely.

Instead, the public had to watch the meeting on Facebook and submit comments by phone or website. While that arrangement was allowed under the temporary law, it is not allowed under current law, said Cleveland-area First Amendment attorney David Marburger, and Catherine Turcer, executive director for good-government group Common Cause Ohio.

Turcer told [cleveland.com](http://cleveland.com) that RTA's decision is "a clear violation" of the law. Marburger said it was "plain" to him that RTA has "no authority" to "exclude the public from the meeting room."

"There's no wiggle room there," Marburger said.

RTA, responding to questions from The Plain Dealer and [cleveland.com](http://cleveland.com), said its decision to allow only board and RTA staff members at meetings is health-related.

## More than a year later, cop who pepper-sprayed journalists still not named

*From Ohio Capital Journal*

The union that represents Columbus police is saying one thing but doing another regarding possible misconduct during last summer's demonstrations. Its leader said there shouldn't be a rush to judge apparent police wrongdoing, but then the union moved to block the fuller investigation that its leader claimed to want.

Such union obstruction in numerous American cities is said to be a major barrier to accountability. And critics say it's stymieing efforts to clamp down on the kinds of police behavior that sparked last year's firestorm of protest in the first place.

Keith Ferrell, president of FOP Lodge #9, on June 2 last year told The Columbus Dispatch "I think the whole story needs to be told." He was referring to an incident that happened a night earlier.

Videos and photos from multiple angles showed three journalists with the Ohio State University newspaper, The Lantern, standing well apart from demonstrators near campus. They were holding up their press IDs and repeatedly telling cops that they were reporters and that Mayor Andrew Ginther's curfew order allowed them to be there.

Even so, at least one officer pepper-sprayed all three in the face — and one on the back of her neck as she retreated.

More than a year later, the officer still hasn't been identified, much less punished.

The incident was part of a flurry of police assaults on journalists who were working to cover protests in the wake of the May 25, 2020 police killing of George Floyd in Minneapolis. One officer, Derek Chauvin, was later convicted of murder in that incident and sentenced to 22 years in prison.

## 'Takes the public out of the process.' Names of Cincinnati fire chief applicants shared with public only after chief was chosen

*From The Cincinnati Enquirer*

Picking a fire chief is a big decision: Cincinnati's oversees a department 905 employees and a budget of \$134.7 million.

So when the city was searching for a new fire chief, The Enquirer sought to find out who had applied. Was there a lot

of interest? Were there other finalists? How would the pool stack up against the person the city eventually chose?

To do that, The Enquirer filed a request under Ohio's public records law for the names. But the city didn't give The Enquirer the names.

Instead, nearly 10 weeks after announcing the search for a new fire chief, City Manager Paula Boggs Muething alerted council that the city had hired the new chief. It was Assistant Cincinnati Fire Chief Michael Washington — a 28-year veteran of the fire department and by all accounts a popular and well-qualified choice for the \$170,000-a-year job.

The Enquirer did eventually get the names of the 21 candidates, but only after Washington was hired on May 14, and only after The Enquirer sent a follow-up email seeking the records.

"There is no provision in the law that allows a public official to hold on to requested public records and release them at their convenience," said Cincinnati First Amendment attorney Jack Greiner, who represents The Enquirer. "Getting the information to the public after the chief was selected really takes the public out of the process."

## A 'public nonprofit': How much are taxpayers allowed to know about Columbus Zoo operations?

*From The Columbus Dispatch*

Months after top Columbus Zoo and Aquarium officials resigned amid investigations into their personal use of zoo assets, questions remain about how much authority public agencies have over the zoo.

The zoo receives about 20% of its annual budget from taxpayers, and its employees receive state-funded pensions, but nonprofit organizations are shielded from much public scrutiny and are exempt from most public-records laws.

The Ohio Attorney General's Office Charitable Law Section, which regulates the state's nonprofits, began investigating the zoo in April. But the Ohio Ethics Commission, which regulates public entities, continues to review whether it can do so. At the heart of the matter is the question of whether the former zoo officials could be considered public employees under Ohio's ethics laws, as the zoo straddles the line of being a public and private entity.

The Ohio Auditor of State, who verifies that public funds are spent lawfully, also is conducting an audit. Although the zoo has received tax levy funds for decades, the probe marks the first time the state auditor has ever reviewed the zoo's finances.

As a nonprofit, the zoo would not be obligated to conduct meetings publicly or share a majority of its records publicly, according to state law — only those specifically related to how it spends its public funds.

Cooperative partnerships between public agencies and nonprofits are not uncommon, said Ohio Ethics Commission executive director Paul Nick.

"However, when public money is involved, transparency and accountability are crucial to ensuring public confidence," Nick said in an email. "The public shouldn't have to guess whether their tax dollars are being used for public purposes or private gain."

## NAM creates nationwide public notice website

*From Editor and Publisher*

**Editor's Note:** This new national site aims to give more exposure to each state association's public notice site, such as Public Notices Ohio. The national site does not take the place of each state's site and instead directs members of the public to sites like Public Notices Ohio.

To assist the public with easily accessing legal notices nationwide, Newspaper Association Managers (NAM) has created USALegalNotice.com. The website provides direct access to 47 public notice websites from across the country, which are operated by state newspaper associations. Notices include foreclosures, public hearings, financial reports, ordinances and resolutions, among other essential government proceedings.

Beth Bennett is the executive director of the Wisconsin Newspaper Association. Her staff currently oversees the production of the website.

"Public notices are a very important part of a newspaper's identity. We are chronicling the history of our communities," she said. "The industry works very hard to maintain the right to publish all these notices in our states... all of us are always fighting off legislation each year that's introduced to take away these notices from newspapers."



# OHIO ROUNDUP

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## Cleveland Planning Commission holds special meeting without taking customary steps to notify public, reporters

*From Cleveland.com*

The Cleveland City Planning Commission held a last-minute meeting on (May 17) and did not make the same notifications they customarily do to let the public know it would take place.

The commission met to discuss plans the city and the Browns have proposed to build an elevated park over the Shoreway and train tracks to connect downtown and the lakefront. The plans, made public Sunday, also show potential housing and commercial development around FirstEnergy Stadium, along with green space.

Planning Commission Assistant Administrator Michael Bosak said in an email that the special meeting was planned on Friday, May 14 for the following Monday, and that the plans for the lakefront were presented to inform members and solicit feedback. Chairman David Bowen, who called the meeting, said no vote was planned or taken. The commission did not have a quorum, or the number of members necessary to conduct business at a meeting, because multiple members did not show up, Bowen said.

The commission published a notice on Saturday on its website home page about the Monday meeting, but it did not send the customary email to reporters who cover the commission about the hastily called meeting. The Saturday notice included a link for a Zoom meeting for those who wished to attend, went up Saturday.

Guidance on Ohio's Sunshine Laws,

found on the Attorney General's Office's website, says that public bodies "must establish a reasonable method for alerting the public to the time and place of special meetings, as well as the purpose of the meeting," and give at least 24 hours' notice for special meetings to news outlets that have requested such notice. With limited exceptions, state law says the meeting must still be held in public, even if a board does not take a vote.

## Ex-Trump campaign staffers file open government lawsuit in Stark County

*From The Canton Repository*

A group founded by former Trump campaign staffers has filed a lawsuit against the Stark County Board of Elections, alleging the board held an illegal private discussion before voting to buy Dominion voting machines.

Look Ahead America is asking a Stark County Common Pleas judge to invalidate the board's Dec. 9 vote to approve the purchase of 1,450 Dominion ImageCast X voting machines and other voting equipment.

The other plaintiff in the case is listed as Merry Lynne Rini of Jackson Township. Look Ahead America is based in Washington, D.C.

Look Ahead America's 19-page complaint filed May 18 alleges the Board of Elections' minutes show the four-member body met in closed-door executive sessions to discuss the purchase of public property four times. The complaint lists the board meetings for Dec. 9, Jan. 6, Feb. 9 and March 15.

State law allows public bodies to discuss in executive session the purchase of public property. But only "if premature disclosure of information would give an unfair competitive or bargaining advantage to a person whose personal, private interest is adverse to the general public interest," the complaint said.

The Board of Elections gave no indication that it was meeting in executive

session to avoid revealing information to give someone an unfair competitive or bargaining advantage, Look Ahead America argues. Therefore, it says the executive sessions are illegal and by law any actions based on discussions in illegal executive sessions are invalid.

"They didn't want the public to hear what they had to say about buying black-box voting equipment. They broke the law to do it, and we're going to hold them accountable," said Matt Braynard, Look Ahead America's executive director.

## Ohio hospital won't release names of officers in shooting

*From the Associated Press*

The names of the hospital officers involved in the fatal shooting of a man in an Ohio emergency room (in April) won't be released by a private health system, with officials arguing that that information isn't subject to the state open records law.

Columbus and suburban Westerville police officers, along with security officers from Mount Carmel St. Ann's Hospital, also in Westerville, all had roles in events leading to the April 12 death of Miles Jackson. Both Columbus and St. Ann's officers fired their weapons.

Columbus released the names of its officers and their personnel files within 48 hours of the shooting. Westerville also released records about its officers — who did not fire their guns — and their interactions with Jackson before the shooting.

But Columbus-based Mount Carmel officials argue officers are part of a private security department, and — while they carry guns — don't exercise regular police powers including making arrests.

The hospital system also contends that its officers aren't subject to a 2015 Ohio Supreme Court ruling that said records from a private university's police department, including arrest reports, had to be released as public records.

St. Ann's officers are "members of

a private security department within our hospital,” said Mount Carmel spokesperson Samantha Irons. “They do not have or exercise plenary police power. We are a private, not-for-profit institution and believe that we are not subject to the public records act that you reference.”

Mount Carmel has more than 100 “safety and security officers” in its hospitals but officials wouldn’t provide an individual breakdown for St. Ann’s. Officers hold state certification from the Ohio Peace Officer Training Academy for themselves, not Mount Carmel, said hospital spokesperson Cindy Kalis.

State law governing “hospital police officers” requires an agreement between appointed police officers at hospitals and local police chiefs or sheriffs. Westerville has no such agreement with Mount Carmel St. Ann’s.

“They are not peace officers, so if arrests or transfers are required, they contact the appropriate agency,” said Westerville spokesperson Christa Dickey.

Many hospital systems have their own police departments that more closely resemble municipal law enforcement agencies. Those include Akron-based Summa Health, with 59 officers listed in Ohio Peace Officer Training Academy records, and Columbus-based Ohio Health, with 165 officers listed in OPOTA records.

The law also requires the secretary of state to appoint and commission any person the hospital designates “to act as police officers for the hospital.” Secretary of State records reviewed by The Associated Press finds no Mount Carmel officers among the hospital officers commissioned by the office, though other health system police departments are included in them.

The fact that St. Ann’s officers fired their weapons as they tried to assist Columbus police suggests the hospital officers were in fact acting like law enforcement personnel, said Dave Marburger, a Cleveland attorney and state open records law expert.

“This sounds to me like security police officers acting as police officers without the authority to act that way,” he said.

Jackson, 27, was shot and killed in a St. Ann’s ER room after a struggle with Columbus police officers that started when they discovered he had a gun concealed in his sweatpants.

## Lakewood earns state honor for online public records portal

*From Cleveland.com*

Lakewood’s new online public records portal has received the Ohio auditor’s highest rating for open and transparent government.

“Open and transparent government has been a priority since I started on council,” Mayor Meghan George said. “Councilman (Tristan) Rader and I worked hard on this initiative.

“It’s good to see our hard work paying off, with the auditor of state recognizing Lakewood’s open process for public record requests. My administration will continue to explore ways to promote openness and transparency,” she said.

Rader added, “Back when we served on council together in 2019, we put forward a resolution that created some updated guidelines for public record handling, as well as how public records are kept.”

The auditor’s STars Rating System (STaRS) has awarded Lakewood four stars for transparency.

In its first year of implementation, the state program assigns governments one star for meeting all Sunshine Law requirements, as well as up to three additional stars for implementing recommended best practices.

Considering that Lakewood’s previous public records system update took place in 2008, both George and Rader were behind bringing the operation into the 21st century with a fully online-accessible operation.

Rader noted that the city has successfully created a one-stop shop for all public record needs, which over the last year has seamlessly processed more than 500 requests. Once the staff was fully trained, the intended results were quicker and more efficient record request response times.

## Cincinnati council member indicted for deleting texts

*From The Associated Press*

A Cincinnati city council member has been indicted on a tampering with records charge for allegedly deleting text messages related to an ongoing investigation, the latest council member to face wrongdoing allegations.

A Hamilton County grand jury handed up the indictment against Wendell Young, 75, on (April 14).

The Cincinnati Enquirer reports that the charge stems from an investigation related to Mayor John Cranley’s efforts to fire then-City Manager Harry Black in March 2018. Only the city council can fire the city manager. Young and four other council members texted together about keeping Black and regaining power they believed Cranley had usurped.

Black eventually resigned, and Cincinnati resident Mark Miller filed a lawsuit alleging the five council members — a majority of the governing body — had violated Ohio’s Open Meetings Act by texting with each other about city business. A judge ordered all texts by the five council members to be preserved in case they were pertinent to the legal proceedings.

When it came time for authorities to look at the texts, some messages were missing from the phones of Young and another council member. The other council member said their phone had been damaged, resulting in lost texts, while Young admitted to deleting the texts from his phone, recently telling The Enquirer that he thought they were no longer needed since the newspaper had published some texts.

Pat Hanley, a special prosecutor who has been investigating whether the texts themselves or the missing texts rose to the level of a crime, said that between January and October of 2018, Young “knowingly and with the purpose to defraud, destroyed text messages that belonged to a government entity.”

Young told the newspaper he had been offered a plea deal, which he turned down, calling it “ridiculous.” He also described ongoing investigation as the “seamy and dirty side of politics.”

The Democrat could face up to three years in prison if he’s convicted.





# OHIO ROUNDUP

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## Cleveland State University passed over five ‘most qualified’ candidates to give \$140,000 job to disgraced Cuyahoga County HR chief, records show

*From Cleveland.com*

Records raise questions about Cleveland State University President Harlan Sands’ public assertion that the university gave a \$140,000-a-year human resources job to a late-applying candidate with a criminal record because all 37 other applicants lacked the “right skills and experience.”

Applicant evaluations reviewed by [cleveland.com](http://cleveland.com) and The Plain Dealer show that the university ranked five other applicants as “most qualified,” the same designation given to the school’s eventual choice for the job of associate vice president of human resources, Douglas Dykes.

The records also show that four of the five other “most qualified” candidates had experience in higher education, a credential that the university’s job description listed as “highly preferred” and one that Dykes lacked at the time.

Several other applicants met requirements for holding a master’s degree, and having eight-plus years of HR experience and five-plus years of HR leadership, yet they were designated as only “partially qualified,” along with an applicant who listed no formal HR positions on his resume.

The records show that the university’s evaluation process included placing all of the applicants into one of three categories – not qualified, partially qualified and most qualified. But no records indicate how Dykes was chosen over the other five most-qualified applicants.

## Judge rules Lakota school board violated Ohio public meeting laws

*From The Journal-News*

A judge has approved a settlement in a lawsuit against Lakota school officials finding the district’s school board violated state public meeting laws during the last two years.

The lawsuit, which was filed in Butler County Common Pleas Court in March by a former Lakota school parent, who accused the Lakota Board of Education of violating Ohio laws governing public meetings and records of such gatherings.

Vanessa Wells’ lawsuit included among other allegations a claim the board provided only sparsely described meeting minutes from a July gathering where members voted to pick one of a number of plans to return to classes during the coronavirus pandemic.

Moreover, the lawsuit alleged the Lakota board did not publicly announce upcoming committee meetings nor provide minutes after those meetings were conducted.

In his late April judgment approving the settlement, Butler County Common Pleas Court Judge Gregory Stephens stated, “the (school) board and board’s committees failed to comply (with) requirement that a public body promptly prepare, file and maintain official meeting minutes at some of its meetings within the last two years.”

Stephens also stated the school board did not specify as required by state public meeting law the precise reason when the members moved into private, executive sessions for discussions.

And the board did not, he said, “provide adequate notice of their regularly scheduled and/or special meetings,” as required by law.

## Search government notices at Public Notices Ohio

Public Notices Ohio is the state’s official public notices website. Run at no cost to the citizens of Ohio by the Ohio News Media Association, this website reprints all the local and statewide government notices published in newspapers across the state.



Go to [www.publicnoticesohio.com](http://www.publicnoticesohio.com) to search tens of thousands of current notices and keep informed on what your government is doing. More than a million notices have been published on the site in the last six years.



## Wandering cops shuffle departments, abusing citizens

*From US News and World Report*

Timothy Loehmann wanted to be a police officer like his father. He got a job in Independence, Ohio, but it didn't go well. His supervisors allowed him to quit after he suffered a "dangerous lack of composure" during firearms training. The department concluded he would "not be able to cope or make good decisions" under stress. The deputy chief wrote Loehmann "could not follow simple directions, could not communicate clear thoughts nor recollections, and his handgun performance was dismal."

Cleveland Police did not check on Loehmann's history in Independence before hiring him. And Ohio law required a felony before an officer would lose his badge. So it was Loehmann who responded in the fall of 2014 to the Cleveland park where 12-year-old Tamir Rice was playing with what turned out to be a toy gun. Loehmann shot him dead.

The Cleveland department's failure to check on Loehmann's background is an example of one of the biggest roadblocks to police accountability - "wandering cops" who lose their jobs in one place only to be rehired and to engage in misconduct in another. The problem of wandering cops continues to haunt police accountability amid piecemeal reforms that fall short of fixing the problem, experts say.

There is a straightforward solution, experts say:

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- a national database open to the public with the names of all officers who have engaged in misconduct;
- a requirement that all law enforcement agencies consult that database before hiring.

But that solution has proved elusive. Most states keep the names of disciplined officers secret and the vast majority of departments do not fully investigate the background of an officer they are hiring. Police chiefs, who have found it difficult to rid their departments of problem officers, generally support stronger laws. Police unions oppose them, arguing that past allegations - many of them denied - shouldn't follow officers through their careers.

## Governments delay access to public records during pandemic

*From The Associated Press*

As states prepared to reopen their economies following coronavirus shutdowns last spring, The Associated Press asked governors across the U.S. for records that could shed light on how businesses and health officials influenced their decisions.

(As of March 2021), after several more Covid-19 surges and shutdowns, the AP still has not received records from about 20 states. Some outright denied the requests or sought payments the AP declined to make. Others have not responded, or said they still need more time.

Public records have become harder to get since the world was upended by the pandemic a year ago. Governors, legislatures and local officials have suspended or ignored laws setting deadlines to respond to records requests. They cited obstacles for staffers who are working at home or are overwhelmed with crisis management.

The result is that information that once took a few days or weeks to obtain now often takes months — depriving the public of timely facts about decisions their leaders are making.

"The pandemic rages on, but investigative journalism doesn't halt. The public's right to know doesn't cease to exist," said Gunita Singh, a legal fellow at the Reporters Committee for Freedom of

the Press, which has tracked nationwide delays in responding to public records requests.

"Having these unnecessary measures in place that hinder open government sets a terrible precedent," Singh said.

## Supreme Court rules against environmental group that had sought access to government records

*From ABC News*

Justice Amy Coney Barrett delivered her first Supreme Court majority opinion (on March 4), ruling against an environmental group that had sought access to government records.

President Donald Trump's third nominee wrote for a 7-2 court that certain draft documents do not have to be disclosed under the federal Freedom of Information Act. The case was the first one Barrett heard after joining the court in late October, and it took four months for the 11-page opinion to be released. Two liberal justices, Stephen Breyer and Sonia Sotomayor, dissented.

The opinion Barrett wrote involved the environmental group the Sierra Club, which sued seeking access to federal government documents involving certain structures used to cool industrial equipment and their potential harm to endangered wildlife. Barrett began by explaining that FOIA makes "records available to the public upon request, unless those records fall within one of nine exemptions." Those exemptions include "documents generated during an agency's deliberations about a policy, as opposed to documents that embody or explain a policy that the agency adopts."

Barrett said the documents the Sierra Club was seeking were draft documents that did not need to be disclosed. And she dismissed concerns the group had raised that ruling against it would encourage officials to "stamp every document 'draft'" to avoid disclosing them. Barrett said that if "evidence establishes that an agency has hidden a functionally final decision in draft form" then it won't be protected from disclosure requirements.



# Ohio Coalition for Open Government

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The Ohio Coalition for Open Government (OCOG) is a tax-exempt 501 (c)(3) corporation established by the Ohio News Media Foundation in June 1992. The Coalition is operated for charitable and educational purposes by conducting and supporting activities to benefit those who seek compliance with public access laws. It is also affiliated with a national network of similar state coalitions.

The Coalition serves as a clearinghouse for media and citizen grievances that involve open meetings and open records, and offers guidance to reporters in local government situations. The activities of the Coalition include monitoring

government officials for compliance, filing “amicus” briefs in lawsuits, litigation and public education.

Annual membership to OCOG entitles a group or individual the use of the FOI legal hotline, and subscription to the newsletter.

OCOG is funded by contributions from The Ohio News Media Foundation and other outside sources. Its seven-member board includes public trustees from organizations with an interest in freedom of information. For board members, please see the masthead on page 2.

## OCOG needs your support!

OCOG’s most public – and expensive – activity is supporting legal cases involving open government issues in Ohio. The Coalition receives multiple requests each year to provide “amicus” (friend of the court) briefs in pending cases. OCOG’s experienced attorneys have helped plaintiffs achieve major wins at the Ohio Supreme Court. In recent years, cases OCOG supported resulted in the following rulings:

- Thanks to the efforts of courageous student journalists, police records kept by private college police forces utilizing sworn and commissioned officers are now subject to Ohio’s open records law – meaning that these forces no longer can secretly arrest and detain people or investigate thefts, assaults and other campus incidents that should be open to scrutiny. (Schiffbauer v. Otterbein University)
- Public bodies cannot use email to discuss and deliberate in an effort to exclude other board members and end-run requirements of Ohio’s open meetings law. OCOG supported a school board member who didn’t like what he saw. (White v. Olentangy School District)

- Police can no longer indefinitely withhold entire files of closed cases just because someone could file a future action, thus providing access to those who may be able to prove they were wrongfully convicted. OCOG’s support was critical in a multi-year battle to provide an avenue for the Innocence Project at the University of Cincinnati to evaluate these claims. (Caster v. City of Columbus)

The cost of such briefs is high – ranging from a minimum of \$5,000 in most cases to \$10,000 or considerably more with additional appeals adding more costs. Given OCOG’s resources, only one or two cases a year can be considered.

These issues never go away. There is an urgent need for an organization such as OCOG to help fight these battles. The Coalition particularly seeks support to bolster the Hal Douthit Fund, named after OCOG’s founding board chairman, and maintained to cover the expenses for legal work.

**Donations to OCOG can be mailed to the address above. You can also submit donations online at [www.ohioopengov.com](http://www.ohioopengov.com).**

## Join OCOG

Any non-Ohio Newspapers Foundation member may submit an application for OCOG membership to the OCOG trustees for approval. Membership includes use of the OCOG hotline through the OCOG retainer to Baker & Hostetler and two issues of the OCOG newsletter. The cost of OCOG dues varies with the membership category the applicant falls under. The categories and dues prices are as follows:

Attorneys and Corporate Members .....	\$70
Non-Profit Organizations .....	\$50
Individual Membership.....	\$35
College & University Students.....	\$25
High School Students.....	\$10

To download the OCOG application form, please go to [www.ohioopengov.com](http://www.ohioopengov.com).