

**In the
Supreme Court of Ohio**

STATE OF OHIO *ex rel.* **GATEHOUSE
MEDIA OHIO HOLDINGS II, INC. D/B/A
THE COLUMBUS DISPATCH**

Relator,

vs.

**THE CITY OF COLUMBUS
Police Department**

Respondent.

Case No. 2023-1327

Original Action in Mandamus

RELATOR'S MERIT BRIEF

John C. Greiner* (0005551)
**Counsel of Record*
Darren W. Ford (0086449)
FARUKI PLL
201 East Fifth Street, Suite 1420
Cincinnati, OH 45202
Telephone: (513) 632-0315
Fax: (513) 632-0319
Email: jgreiner@ficlaw.com
dford@ficlaw.com

Counsel for Relator

Zachary M. Klein (0078222)
Columbus City Attorney

Aaron D. Epstein* (0063286)
**Counsel of Record*

Joshua P. Monroe (0095538)
Assistant City Attorneys

77 N. Front St., 4th Floor
Columbus, OH 43215

Telephone: (614) 645-0480
Fax: (614) 645- 6949

Email: adepstein@columbus.gov
jpmonroe@columbus.gov

*Counsel for Respondent,
The City of Columbus, Division of Police*

TABLE OF CONTENTS

TABLE OF CONTENTS..... ii

TABLE OF AUTHORITIES iv

I. INTRODUCTION 1

II. STATEMENT OF FACTS 4

III. ARGUMENT 7

Proposition of Law No. I
Mandamus is the appropriate remedy to compel compliance with R.C. 149.43, and the constitutionality of a statute may be challenged by mandamus in an action under R.C. 149.43..... 7

Proposition of Law No. II
R.C. 2930.07 does not exempt the name, address, or other identifying information of police officers from disclosure under the OPRA, as a police officer against whom a criminal offense or delinquent act is committed, or who is directly and proximately harmed by the commission of the offense or act, while performing their official duties, is not a "victim" within the meaning of Article I, Section 10a of the Ohio Constitution..... 8

Proposition of Law No. III
If R.C. 2930.07 permits CDP to withhold identifying information about the police officers involved in the I-70 Incident, it unconstitutionally infringes on the right of the public to inspect public records protected by Section 1, 3, 11 and 16 of the Ohio Constitution..... 22

IV. CONCLUSION..... 31

CERTIFICATE OF SERVICE 32

APPENDIX.....App'x 001

Ohio Const., Art. I, § 1.....App'x 002

Ohio Const., Art. I, § 3.....App'x 003

Ohio Const., Art. I, § 10a.....App'x 004

Ohio Const., Art. I, § 11.....App'x 005

Ohio Const., Art. I, § 16.....	App'x 006
R.C. 149.43	App'x 007
R.C. 2930.01	App'x 033
R.C. 2930.07	App'x 037

TABLE OF AUTHORITIES

Page No.

Caselaw

Arcanum Natl. Bank v. Hessler, 69 Ohio St.2d 549, 433 N.E.2d 204 (1982)15

Bowling Green v. Lodico, 11 Ohio St.2d 135, 228 N.E.2d 325 (1967)27

Cincinnati v. Butterfield, 14 Ohio App. 395 (1st Dist.1921).....14, 15

City of Centerville v. Knab, 162 Ohio St.3d 623, 2020-Ohio-5219,
166 N.E.3d 1167 *passim*

City of San Diego v. Roe, 543 U.S. 77, 125 S.Ct. 521, 160 L.Ed.2d 410 (2004)20

Cook Cty. v. United States ex rel. Chandler, 538 U.S. 119 (2003)13

Dayton Newspapers, Inc. v. Dayton, 45 Ohio St.2d 107, 341 N.E.2d 576 (1976)1, 23, 26

Glik v. Cunniffe, 655 F.3d 78 (1st Cir.2011)26, 27

Groch v. GMC, 117 Ohio St.3d 192, 2008-Ohio-546, 883 N.E.2d 37729

Holeton v. Crouse Cartage Co., 92 Ohio St.3d 115, 2001-Ohio-109, 748 N.E.2d 111118

In re Estate of McWilson, 155 Ohio St. 261, 98 N.E.2d 289 (1951)24

Kish v. City of Akron, 109 Ohio St.3d 162, 2006-Ohio-1244, 846 N.E.2d 8111, 23, 24, 25, 26

Klein v. Madison, E.D.Pa. No. 17-4507, 2018 U.S. Dist. LEXIS 121420
(July 20, 2018)27

McKinney v. Omni Die Casting, Inc., 2017-Ohio-2949, 91 N.E.3d 124 (5th Dist.).....18

Mills v. Alabama, 384 U.S. 214 (1966)27

New York Times Co. v. Sullivan, 376 U.S. 254 (1964).....27

Moore v. City of Middletown, 133 Ohio St.3d 55, 2012-Ohio-3897, 975 N.E.2d 97725

Perry Ed. Assn. v. Perry Local Educators' Assn., 460 U.S. 37, 103 S.Ct. 948 (1983).....28

Pinchot v. Charter One Bank, 99 Ohio St.3d 390, 2003-Ohio-4122, 972 N.E.2d 1105 fn. 2

Smith v. City of Cleveland, 8th Dist. Cuyahoga No. 78889, 2001 Ohio App. LEXIS 5516
(Dec. 13, 2001)18

<i>Sorrell v. IMS Health</i> , 564 U.S. 552, 131 S.Ct. 2653 (2011)	26
<i>Sorrell v. Thevenir</i> , 69 Ohio St.3d 415, 633 N.E.2d 504 (1994)	28
<i>State ex rel. Cincinnati Enquirer v. City of Cincinnati</i> , 157 Ohio St.3d 290, 2019-Ohio-3876, 135 N.E.3d 772	9
<i>State ex rel. Cincinnati Enquirer v. Jones-Kelley</i> , 118 Ohio St.3d 81, 2008-Ohio-1770, 886 N.E.2d 206	2, 9
<i>State ex rel. Cincinnati Enquirer v. Ohio Dept. of Pub. Safety</i> , 168 Ohio St.3d 433, 2016-Ohio-7987, 71 N.E.3d 258.....	8, 9
<i>State ex rel. Cincinnati Enquirer v. Sage</i> , 142 Ohio St.3d 392, 2015-Ohio-974, 31 N.E.3d 616	7, 8
<i>State ex rel. Clay v. Cuyahoga Cty. Med. Examiner's Office</i> , 152 Ohio St.3d 163, 2017-Ohio-8714, 94 N.E.3d 498.....	30
<i>State ex rel. Doerfler v. Price</i> , 101 Ohio St. 50, 128 N.E. 173 (1920).....	14
<i>State ex rel. Hogan Lovells U.S., L.L.P. v. Dept. of Rehab. & Corr.</i> , 156 Ohio St.3d 56, 2018-Ohio-5133, 123 N.E.3d 928.....	fn. 1
<i>State ex rel. James v. Ohio State Univ.</i> , 70 Ohio St.3d 168, 637 N.E.2d 911 (1994).....	24
<i>State ex rel. Keller v. Cox</i> , 85 Ohio St.3d 279, 707 N.E.2d 931 (1999).....	28
<i>State ex rel. Kesterson v. Kent State Univ.</i> , 156 Ohio St.3d 13, 2018-Ohio-5108, 123 N.E.3d 887	1
<i>State ex rel. Michaels v. Morse</i> , 165 Ohio St. 599, 138 N.E.2d 660 (1956)	8
<i>State ex rel. Natl. Broad. Co. v. City of Cleveland</i> , 38 Ohio St.3d 79, 526 N.E.2d 786 (1988).....	1, 2, 24
<i>State ex rel. Park Invest. Co. v. Bd. of Tax Appeals</i> , 26 Ohio St.2d 161, 270 N.E.2d 342 (1971).....	8
<i>State ex rel. Patterson v. Ayers</i> , 171 Ohio St. 369, 171 N.E.2d 508 (1960).....	1, 22, 23
<i>State ex rel. Summers v. Fox</i> , 163 Ohio St.3d 217, 2020-Ohio-5585, 169 N.E.3d 625.....	11
<i>State ex rel. Suwalski v. Peeler</i> , 167 Ohio St.3d 38, 2021-Ohio-4061, 188 N.E.3d 1048.....	11
<i>State ex rel. The Miami Student v. Miami Univ.</i> , 79 Ohio St.3d 168, 680 N.E.2d 956 (1997).....	23, 26
<i>State ex rel. Thomas v. McGinty</i> , 164 Ohio St.3d 167, 2020-Ohio-5452, 172 N.E.3d 824.....	11

<i>State ex rel. Zupancic v. Limbach</i> , 58 Ohio St.3d 130, 568 N.E.2d 1206 (1991).....	8
<i>State v. Brasher</i> , 171 Ohio St.3d 534, 2022-Ohio-4703, 218 N.E.3d 899.....	11
<i>State v. Fisk</i> , 171 Ohio St.3d 479, 2022-Ohio-4435, 218 N.E.3d 852.....	11
<i>State v. Henderson</i> , 11th Dist. Portage No. 2010-P-0046, 2012-Ohio-1268.....	28
<i>State v. Lazzaro</i> , 76 Ohio St.3d 261, 667 N.E.2d 384 (1996)	16
<i>State v. Montgomery</i> , 169 Ohio St.3d 84, 2022-Ohio-2211, 202 N.E.3d 616	11
<i>State v. Yerkey</i> , 171 Ohio St.3d 367, 2022-Ohio-4298, 218 N.E.3d 749.....	11, 16, 17, 18
<i>Stetter v. R.J. Corman Derailment Servs., LLC</i> , 125 Ohio St.3d 280, 2010-Ohio-1029, 927 N.E.2d 1092	29
<i>Wells v. Lewis</i> , 12 Ohio Dec. 170 (Super.Ct.1901)	1, 23, 24, 25
<i>White v. Clinton Cty. Bd. of Commrs.</i> , 76 Ohio St.3d 416, 667 N.E.2d 1223 (1996)	23, 26
<u>Constitutional Provisions, Statutes, Ordinances, and Administrative Rules</u>	
Ohio Const., Art. I, § 1.....	25
Ohio Const., Art. I, § 3.....	25
Ohio Const., Art. I, § 10a.....	<i>passim</i>
Ohio Const., Art. I, § 11.....	26
Ohio Const., Art. I, § 16.....	25
2022 Sub.H.B. No. 343.....	2, 30
Evid.R. 201	20
R.C. 149.011	4
R.C. 149.43	<i>passim</i>
R.C. 2921.15	16
R.C. 2921.24	19
R.C. 2921.25	19
R.C. 2921.33	16
R.C. 2921.331	16

R.C. 2930.01	2
R.C. 2930.07	<i>passim</i>

I. INTRODUCTION

Ohio citizens have long enjoyed the right of robust access to the records of their government. This right rests on the idea that in a democracy, the government's records are the people's records, and the officials in whose custody they happen to be are merely trustees for the people. *See State ex rel. Kesterson v. Kent State Univ.*, 156 Ohio St.3d 13, 2018-Ohio-5108, 123 N.E.3d 887, ¶ 9; *Dayton Newspapers, Inc. v. Dayton*, 45 Ohio St.2d 107, 109, 341 N.E.2d 576 (1976); *State ex rel. Patterson v. Ayers*, 171 Ohio St. 369, 371-72, 171 N.E.2d 508 (1960). Consequently, this Court has recognized that "open access to government papers is an integral entitlement of the people, to be preserved with vigilance and vigor." *Kish v. City of Akron*, 109 Ohio St.3d 162, 2006-Ohio-1244, 846 N.E.2d 811, ¶ 17.

The concept of "public records" in Ohio law dates back to before Ohio's founding. The 1787 ordinance passed by the United States Congress establishing the first government for the Northwest Territory appointed a "Secretary" whose duties included keeping and preserving "the public records of the district." Northwest Territory Ordinance of 1787. Attending the concept of public records recognized in this nearly 250-year-old ordinance was the right of Ohio citizens to inspect their records—a right which one turn-of-the-century Cincinnati Superior Court judge explained rose to the level of a property right, not merely a political one. *Wells v. Lewis*, 12 Ohio Dec. 170, 181 (Super.Ct.1901).

The recognition of the public's right to inspect its government's records as one based in property represents a rejection of the English common law rule, which "curtailed citizens' access to governmental information." *Kish* at ¶ 17. *See also State ex rel. Natl. Broad. Co. v. City of Cleveland*, 38 Ohio St.3d 79, 81, 526 N.E.2d 786 (1988) (observing that under early English common law "a citizen could inspect documents only with the consent of the

crown or by showing that inspection was necessary to maintain or defend a legal action"). The right of Ohio citizens to inspect their government's records is thus fundamental to the operation of Ohio's democracy.

In April of 2023, the Ohio General Assembly passed legislation relating to Section 10a of Article I of the Ohio Constitution, referred to as "Marsy's Law." 2022 Sub.H.B. No. 343. With this Marsy's Law legislation, the General Assembly added R.C. 2930.07, which requires law enforcement agencies to redact from a "case document" the "name, address, or other identifying information" of an individual who constitutes a "victim." The term "victim" has the same meaning as provided for in Article I, Section 10a(D) of the Ohio Constitution. R.C. 2930.01(H).

Respondent City of Columbus, which includes its police department ("Respondent" or "CDP") interprets the term "victim," as defined by Section 10a(D), to include a police officer against whom "a criminal offense or delinquent act is committed or who is directly and proximately harmed by the commission of the offense or act" while performing their official duties. Based on its interpretation of Section 10a(D), CDP believes it must redact identifying information about its police officers from records otherwise subject to disclosure under the Ohio Public Record Act (OPRA), R.C. 149.43. This interpretation of Section 10a(D) caused CDP to deny the public records request of Relator Gatehouse Media Ohio Holdings II, Inc. d/b/a The Columbus Dispatch ("The Dispatch" or "Relator"), giving rise to this original action.

Respondent bears the burden of demonstrating that the identifying information of its police officers "fall[s] squarely" within R.C. 2930.07. *State ex rel. Cincinnati Enquirer v. Jones-Kelley*, 118 Ohio St.3d 81, 2008-Ohio-1770, 886 N.E.2d 206, ¶ 10. To start, Respondent's interpretation

of the term "victim" as defined in Section 10a(D) is inconsistent with the Court's reasoning in *City of Centerville v. Knab*, 162 Ohio St.3d 623, 2020-Ohio-5219, 166 N.E.3d 1167, in which it held that a municipal corporation is not a "victim" within the meaning of Section 10a(D). In reaching that conclusion, the Court reasoned that the rights afforded by Marsy's Law "are incongruent with an understanding of 'victim' that includes a public corporation." *Id.* at ¶ 27. Chief Justice Kennedy, writing separately, further observed that "Marsy's Law . . . creates rights that victims of crime may wield against the government; it does not grant the government rights against the people or itself." *Id.* at ¶ 48 (Kennedy, J. concurring in the judgment). The rights afforded by Marsy's Law are likewise incongruent with an understanding of the term victim that would include police officers against whom criminal offenses are committed while performing their official duties, and would grant government actors rights against the people, and against itself.

To the extent the Court finds that the term "victim" does include the Columbus police officers whose identifying information is at issue in this case, The Dispatch asks that the Court find that R.C. 2930.07 exceeds the General Assembly's power to restrict the public's access to their records under the Ohio Constitution, and direct CDP to produce the identifying information withheld. But The Dispatch's interpretation of "victim" avoids bringing R.C. 2930.07 into conflict with rights Relator asks this Court to find are protected by Sections 1, 3, 11 and 16 of the Ohio Constitution.

II. STATEMENT OF FACTS

A. Factual Background

Relator operates and does business as The Columbus Dispatch, a newspaper of general circulation covering news and events in the Columbus metropolitan area, and throughout Ohio. (Jt. Ex. A, Agreed Stmt. Of Facts ("Agreed Stmt."), ¶ 1.) Respondent the City of Columbus, which includes its police department, is a "public office" within the meaning of R.C. 149.011(A). (*Id.* at ¶ 2.)

Pursuant to Section III ("Procedures") of Columbus Police Division Directive No. 2.01, CDP officers or a supervisor are to complete a "Use of Force Report" ("UOFR") following incidents in which an officer uses a certain level of force against a person while in the line of duty. (*Id.* at ¶ 3.)

CDP police cruisers are equipped with dashboard cameras that CDP officers use while engaged in the performance of their official duties. Recordings made by those cameras are "public records," unless an exception applies. (*Id.* at ¶ 4.) CDP officers also wear body cameras while they perform their duties under specified circumstances, as detailed in Columbus Police Division Directive No. 11.07. (*Id.* at ¶ 5.)

Shortly after 4 p.m. on July 6, 2023, CDP officers engaged in a confrontation on Interstate 70 with three individuals suspected of having been involved in an armed robbery of a Porsche dealership earlier in the day ("I-70 Incident"). (*Id.* at ¶ 6.) During the incident, one of the suspects shot and injured an unidentified Columbus police officer. CDP officers shot and killed that suspect, Abdisamad Ismail. The two other suspects escaped but were apprehended several days later. (*Id.* at ¶ 7.)

After the shooting, Bethany Bruner, a Dispatch reporter, requested a copy "of all body camera, dash camera and 911 calls etc. from the police shooting on I-70 west today . . ." ("Video Footage Request"). (*Id.* at ¶ 8.) The next day, July 7, Ms. Bruner sent another request for "a copy of any use of force reports related to the shooting on Interstate 70 on July 6, 2023" ("UOFR Request"). Later that same day CDP issued a press release, stating:

Due to recently passed Marsy's Law and the direction of the Columbus City Attorney's Office, the Columbus Division of Police is unable to release the identities of the eight officers involved in this officer-involved shooting.

(*Id.* at ¶ 10.)

On July 10, Kathryn Hartshorne, Public Records Supervisor for CDP sent an email to the media specifically denying the Video Footage Request, citing R.C. 149.43(A)(17)(d)-(f), R.C. 149.43(A)(17) (e)-(g), "ORC Chapter 2920 otherwise known as Marsy's Law" and R.C. 149.43(A)(1)(v) ("[r]ecords the release of which is prohibited by state or federal law") ("Video Footage Denial"). (*Id.* at ¶ 11.) CDP denied the UOFR Request on August 4, asserting that such reports "are not completed until the criminal investigation is concluded." (Relator's Ex. 1, Supp. Affidavit of Bethany Bruner, ¶ 4, Ex. 1.) Ms. Hartshorne attests that at the time of Ms. Bruner's request, a UOFR for the I-70 Incident did not exist. (Respondent's Ex. A, Affidavit of Kathryn Hartshorne, ¶ 18.) Sergeant Terry McConnell further attested that no UOFR regarding the I-70 Incident exists as of February 7, 2024. (Respondent's Ex. D, Affidavit of Sgt. Terry McConnell, ¶ 14.)

On September 12, the Dispatch received a portion of the recordings from the dashboard and body-worn cameras sought by the Video Footage Request, but the recordings

were redacted in such a way as to conceal the identities of the officers involved. City Attorney Zach Klein released a statement to the media on September 14 explaining that:

[t]he video released in the incident in question is footage captured prior to the point at which the officers become victims of a crime, i.e., when the shots were fired at officers. In accordance with the rights afforded to crime victims under Marsy's Law, identifying information has been removed from the recordings . . .

(Agreed Stmt., ¶ 12.) CDP also invoked R.C. 149.43(A)(17)(d), (f), (e), and (g) when it released the footage on September 12. (Respondent's Ex. H, "CDP Notice of Denial Letter.")

To date, The Dispatch has not received unredacted copies of the video footage.

(Agreed Stmt., ¶ 13.)

B. Procedural History

The Dispatch filed its Complaint for Writ of Mandamus on October 19, 2023, seeking to compel disclosure of: (1) unredacted copies of the video footage sought by the Video Footage Request, partially released by CDP on September 14 (hereinafter "I-70 Incident Footage"); and (2) any UOFR regarding the I-70 Incident. CDP filed an Answer to the Complaint on November 16, 2023, raising several defenses, including that The Dispatch was obliged to serve the Ohio Attorney General with a copy of the Complaint, and that the Complaint is not "ripe." On February 12, CDP filed its evidence in the case.

In light of the sworn affidavits of Kathryn Hartshorne and Sergeant Terry McConnell attesting that no UOFR regarding the I-70 Incident exists, and upon verification that Ms. Bruner did receive a response from Ms. Hartshorne to her UOFR Request a little less than a month after she made her request, The Dispatch no longer pursues Count I and Count III of its Complaint

relating to its UOFR Request.¹ Accordingly, The Dispatch limits its claim for relief to Count II and the I-70 Incident Footage.

III. ARGUMENT

The issue in this original action is the propriety of CDP's removal of identifying information about CDP officers from the I-70 Incident Footage pursuant to R.C. 2930.07. To support its reliance on R.C. 2930.07, CDP contends that the officers whose identifying information it removed became victims of a crime while trying to apprehend the perpetrators of a robbery. (Agreed Stmt., ¶ 12.) Because R.C. Chapter 2930 incorporates the definition of the term "victim" used in Article I, Section 10a(D) of the Ohio Constitution, the propriety of CDP's invocation of R.C. 2930.07 turns on whether a police officer involved in use of force is a "victim" within the meaning of that constitutional provision.

Proposition of Law No. I

Mandamus is the appropriate remedy to compel compliance with R.C. 149.43, and the constitutionality of a statute may be challenged by mandamus in an action under R.C. 149.43.

"Mandamus is the appropriate remedy to compel compliance with R.C. 149.43, Ohio's Public Records Act." *State ex rel. Cincinnati Enquirer v. Sage*, 142 Ohio St.3d 392, 2015-Ohio-974, 31 N.E.3d 616, ¶ 10 (internal quotation and citation omitted). To establish entitlement to a writ of mandamus under the OPRA, a relator must establish, by clear and convincing evidence, a "clear

¹ By electing not to pursue Count I of its Complaint, The Dispatch does not concede that CDP responded to the UOFR Request in a reasonable time, as required by the OPRA. *State ex rel. Hogan Lovells U.S., L.L.P. v. Dept. of Rehab. & Corr.*, 156 Ohio St.3d 56, 2018-Ohio-5133, 123 N.E.3d 928, ¶ 44. But because the purpose of The Dispatch's Complaint is to obtain records withheld by CDP, and no UOFR related to the I-70 Incident appears to exist, pursuing this claim is no longer necessary.

legal right to the requested relief and a clear legal duty on the part of [the Respondent] to provide the relief." *Id.*

Relator's claim for relief in this original action may also require the Court to determine if R.C. 2930.07 is constitutional if it determines that the term "victim," as defined by Section 10a, Article I of the Ohio Constitution, includes the CDP officers whose identifying information in the I-70 Incident Footage has been withheld. This Court has long held that "a mandamus action may test the constitutionality of a statute." *State ex rel. Zupancic v. Limbach*, 58 Ohio St.3d 130, 133, 568 N.E.2d 1206 (1991) (citing *State ex rel. Michaels v. Morse*, 165 Ohio St. 599, 608, 138 N.E.2d 660 (1956)). It has further held that where the Court has "found a statute unconstitutional it may direct the public bodies or officials to follow a constitutional course in completing their duties." *Id.* (citing *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals*, 26 Ohio St.2d 161, 270 N.E.2d 342 (1971)).² Thus is may find the statute unconstitutional and direct CDP to produce the withheld information.

Proposition of Law No. II

R.C. 2930.07 does not exempt the name, address, or other identifying information of police officers from disclosure under the OPRA, as a police officer against whom a criminal offense or delinquent act is committed, or who is directly and proximately harmed by the commission of the offense or act, while performing their official duties, is not a "victim" within the meaning of Article I, Section 10a of the Ohio Constitution.

The I-70 Incident Footage was created by dash-cameras and body-worn camera systems, and therefore, the videos comprising that footage constitute public records, unless an exemption applies. *See State ex rel. Cincinnati Enquirer v. Ohio Dept. of Pub. Safety*, 168 Ohio St.3d 433,

² Respondent raises as a defense, in its Answer, the fact that Relator did not serve the Ohio Attorney General with a copy of its Complaint. But as this is an original action in mandamus, and not a declaratory judgment action filed under R.C. Chapter 2721, "service on the Attorney General is not required as a prerequisite to invoking the court's jurisdiction." *Pinchot v. Charter One Bank*, 99 Ohio St.3d 390, 2003-Ohio-4122, 972 N.E.2d 1105, ¶ 6 n.1.

2016-Ohio-7987, 71 N.E.3d 258, ¶ 34 (dash-cam footage); *State ex rel. Cincinnati Enquirer v. City of Cincinnati*, 157 Ohio St.3d 290, 2019-Ohio-3876, 135 N.E.3d 772, ¶ 13 (body-cam footage). *See also* R.C. 149.43(A)(15), (16) & (17) (defining "body-worn camera" and "dashboard camera" and setting forth exemptions to disclosure of recordings captured by those devices).

When CDP released the redacted I-70 Incident Footage on September 12, it asserted that "identifying information" about the involved police officers was being withheld "under Marsy's Law." CDP also invoked R.C. 149.43(A)(17)(d), (e), (f) and (g) in its general response to requests for the I-70 Incident Footage. (Resp.'s Ex. H, "CDP Notice of Denial Letter.")

CDP bears the burden of demonstrating that the I-70 Incident Footage that it has withheld "fall[s] squarely" within the exemptions it has invoked. *See State ex rel. Cincinnati Enquirer v. Jones-Kelley*, 2008-Ohio-1770 at ¶ 10. "Exceptions to disclosure under the act are strictly construed against the records custodian . . ." *State ex rel. Cincinnati Enquirer v. Cincinnati*, 2019-Ohio-3876 at ¶ 6.

As an initial matter, R.C. 149.43(A)(17)(d), (e), (f) and (g) have no application to footage of the officers involved in the I-70 Incident who were not injured, as they did not suffer "grievous bodily harm" or "serious physical harm." Further, those exemptions have no application to footage of the man who was shot and killed by CDP officers, as that act was "effected by a . . . peace officer." For the portions of the I-70 Incident Footage showing the officer suffering a gunshot wound, or his post-gunshot injuries, The Dispatch does not dispute that CDP may redact that footage pursuant to R.C. 149.43(A)(17)(f) and (g).

A. The Court's Decision in *City of Centerville v. Knab* Provides the Framework Under Which the Court Considers the Meaning of the Term "Victim"

R.C. 149.43(A)(1)(rr) excepts from the definition of "public records," "[r]ecords, documents, and information the release of which is prohibited under sections 2930.04 and 2930.07 of the Revised Code[.]." Recently enacted R.C. 2930.07(C) provides, in part:

Any public office or public official that is charged with the responsibility of knowing the name, address, or other identifying information of a victim or victim's representative as part of the office's or official's duties shall have full and complete access to the name, address, or other identifying information of the victim or victim's representative. *That public office or public official shall take measures to prevent the public disclosure of the name, address, or other identifying information of the victim or victim's representative through the use of redaction as set forth in division (D) of this section.*

(Emphasis added.) R.C. 2930.07(D) provides, in pertinent part:

On written request of the victim or victim's representative to a law enforcement agency, prosecutor's office, or court, all case documents related to the cases or matters specified by the victim maintained by the entity to whom the victim or victim's representative submitted the request shall be redacted prior to public release pursuant to section 149.43 of the Revised Code to remove the name, address, or other identifying information of the victim.

R.C. 2930.07(D)(1)(a)(i). As relevant here, the term "case documents" means:

a[n] . . . audio or video recording of a victim of . . . an offense of violence . . . regarding a case that is submitted to a court, a law enforcement agency or officer, or a prosecutor . . . including, but not limited to . . . any documentation, including audio or video recordings of a victim . . . an offense of violence, . . . prepared or created by a . . . law enforcement agency or officer . . .

R.C. 2930.07(A)(1)(a). The definition also includes exceptions not relevant here. R.C.

2930.07(A)(1)(b).

R.C. Chapter 2930 incorporates the definition of the term "victim" in Ohio Constitution, Article I, Section 10a, which defines that term as "a person against whom the criminal offense or delinquent act is committed or who is directly and proximately harmed by the commission of the offense or act." R.C. 2930.01(H). Thus, whether CDP could invoke R.C. 2930.07 to shield identifying information about the police officers involved in the I-70 Incident turns on whether those police officers fall within that definition.

This Court has interpreted Section 10a on several occasions. *See State v. Brasher*, 171 Ohio St.3d 534, 2022-Ohio-4703, 218 N.E.3d 899 (construing the term "petition"); *State v. Fisk*, 171 Ohio St.3d 479, 2022-Ohio-4435, 218 N.E.3d 852 (standing of state to challenge trial court's denial of restitution to victim); *State v. Yerkey*, 171 Ohio St.3d 367, 2022-Ohio-4298, 218 N.E.3d 749 (interpreting the term "restitution" under the amendment); *State v. Montgomery*, 169 Ohio St.3d 84, 2022-Ohio-2211, 202 N.E.3d 616 (right of victim to sit at prosecutor's table); *State ex rel. Suwalski v. Peeler*, 167 Ohio St.3d 38, 2021-Ohio-4061, 188 N.E.3d 1048 (whether writ of prohibition available to victim to challenge trial court order); *State ex rel. Summers v. Fox*, 163 Ohio St.3d 217, 2020-Ohio-5585, 169 N.E.3d 625 (whether Section 10a made information exempt from disclosure under R.C. 149.43); *State ex rel. Thomas v. McGinty*, 164 Ohio St.3d 167, 2020-Ohio-5452, 172 N.E.3d 824; *City of Centerville*, 2020-Ohio-5219 (holding that a municipal corporation is not a "victim" under the amendment). In construing Section 10a, the Court has consistently recognized that the law "is concerned with providing *victims* with enumerated rights" and that "it is *not* concerned with providing the state with any legal rights or claims." *Fisk* at ¶ 11.

The Court's decision in *City of Centerville*, in which it previously considered the meaning of the term "victim," provides the analytical framework for this case. In that case, Centerville sought

restitution from a criminal defendant who had been convicted of making a false report to law enforcement and improper use of the 9-1-1 emergency system, asserting that it was a "victim" within the meaning of Section 10a(D). *City of Centerville* at ¶¶ 6-8.

The Court began its discussion by describing the history of Section 10a, and the 2017 initiative that placed the amended language (including the definition of "victim") on the general-election ballot. *Id.* at ¶¶ 11-15. The Court observed that the ballot language "did not include a definition for 'victim.'" *Id.* at ¶ 15. It then reviewed the language of Section 10a, the definition of the term "victim" in that section, and the definition of "victim" used in Ohio's restitution statutes. *Id.* at ¶¶ 16-21.

To reach its holding that Centerville was not a "victim" under Section 10a, and therefore not entitled to restitution, the Court had to determine what Ohio voters intended in approving the amendment. *Id.* at ¶ 22. First, the Court considered whether the language of Section 10a "evinced an intent to include a municipal corporation in the definition of 'victim.'" *Id.* at ¶ 23. The Court concluded that the "normal and ordinary use of the word 'person' suggest[ed] that Ohio voters would not have understood that term to include a public corporation." *Id.* at ¶ 26. The Court bolstered this conclusion by observing that "Marsy's Law focuses on private rights, such as a victim's right 'to be treated with fairness and respect for the victim's safety, dignity and privacy . . .'" and that "[t]hese enumerated rights are incongruent with an understanding of 'victim' that includes a public corporation." *Id.* at ¶ 27.

Next, the Court looked to existing law at the time voters approved the amendment to discern their intent. *Id.* at ¶ 28. The Court observed that Ohio law "on whether a municipal corporation is a person is unclear and inconsistent." *Id.* Despite the inconsistency, the Court concluded that

it would be "incongruent in this context to interpret the word 'person' in the amendment in a way that would give the government rights against its own citizens." *Id.* at ¶ 29.

Last, the Court reviewed "the context surrounding its proposal and enactment" to discern Ohio voters' intent in approving the amendment. *Id.* at ¶ 30. The Court explained:

Marsy's Law was proposed as part of a national victims'-rights movement that seeks to give crime victims constitutional rights equal to those held by the accused. The movement seeks to correct a perceived disparity in which "those accused of crimes have more than 20 individual rights spelled out in the U.S. Constitution, [while] the surviving family members of victims have none." https://www.marsyslaw.us/about_marsys_law (accessed July 9, 2020) [<https://perma.cc/NT9H-QZLK>]. Ohio voters were told that Marsy's Law would ensure that victims and their families receive due process, respect, fairness, and justice. The ballot language for Marsy's Law includes a list of rights that are primarily private and individual in nature. There is simply nothing surrounding the national Marsy's Law movement or the Ohio Marsy's Law initiative that suggests that the voters understood and intended that a public corporation would be a victim.

Id. (alteration in original).

In a separate opinion concurring in the judgment, Chief Justice Kennedy observed that the case did "not present the question whether a municipal corporation is a 'person' within the meaning of Marsy's Law when it is harmed by crime in relation to its nongovernmental, proprietary functions." *Id.* at ¶ 33 (Kennedy, J. concurring in judgment only). The Chief Justice observed that the majority's finding that the term "victim" could include a private corporation was inconsistent with the common law, under which "'municipal corporations and private ones were simply two species of 'body politic and corporate,' treated alike in terms of their legal status as persons capable of suing and being sued.'" *Id.* at ¶ 40 (quoting *Cook Cty. V. United States ex rel. Chandler*, 538 U.S. 119, 126 (2003)).

In reaching the conclusion that Centerville was not a "victim" under the facts before the Court, the Chief Justice instead relied on the fact that Centerville was exercising "a governmental function." *Id.* at ¶ 50. Thus, Chief Justice Kennedy would have adopted a rule that:

[w]hen acting as the sovereign in performing a governmental function, a municipal corporation is not a "person" protected by Article I, Section 10a of the Ohio Constitution. Rather, it is an arm of the state and therefore precluded from violating the rights of victims established by Section 10a. It is the vindicator of the victim's rights and cannot itself be a victim.

Id.

B. CDP Cannot Show that the Identifying Information of Police Officers Involved in the I-70 Incident Falls Squarely Within R.C. 2930.07

Under the framework set forth in *City of Centerville*, the question in this case is whether Ohio voters, in approving Marsy's Law, would have understood the term "victim" to include a police officer against whom a criminal offense was committed while performing their official duties. Although there is no question that a police officer is a "person," the definition of "victim," when considered in the context of Marsy's Law as a whole, compels the same result reached in that case.

First, "[t]he police department derives its authority from the state." *Cincinnati v. Butterfield*, 14 Ohio App. 395, 396 (1st Dist.1921) (citing *State ex rel. Doerfler v. Price*, 101 Ohio St. 50, 128 N.E. 173 (1920)). As the First District explained over a century ago,

The duties of a police officer are the upholding of the law, to see that the laws are obeyed; to prevent and punish infraction of the criminal laws of the state and city; and to patrol his beat for these purposes. In procuring the performance of these duties, *through its police officers*, the city is engaged in the discharge of a governmental function. It is the exercise of a state power.

Id. at 396-97 (emphasis added). The First District's reasoning in *Butterfield* reflects the long-standing common law rule that "[a] corporation can act only through its officer and agents."

Arcanum Natl. Bank v. Hessler, 69 Ohio St.2d 549, 557, 433 N.E.2d 204 (1982).

It is against this common law backdrop that Ohio voters would have understood the term "victim" as it appeared in the general-election ballot language in 2017. As this Court observed in *City of Centerville*, "the language informed voters that the proposed amendment would expand the rights of victims and require that those rights be protected as vigorously as the rights of the accused." *City of Centerville*, 2020-Ohio-5219 at ¶ 15. The ballot language further "indicated that the purpose of the amendment was to ensure 'due process, respect, fairness, and justice for crime victims and their families,'" and included the rights the proposed amendment would provide to victims:

- the right to privacy and to be treated with respect, fairness, and dignity;
- the right to information about the rights and services available to crime victims;
- the right to notification in a timely manner of all proceedings in the case;
- the right to be present and heard at all court proceedings, including the right to petition the court to protect the victim's rights;
- the right to a prompt conclusion of the case;
- to refuse discovery requests made by the accused, except as authorized by Article I, Section 10 of the Ohio constitution;
- the right to reasonable protection from the accused;
- the right to notice of the release or escape of the accused; and
- the right to restitution.

Id. Notably, "[t]he ballot language did not include a definition for 'victim.'" *Id.*

1. The Plain Language of the Amendment is Ambiguous

Under the *City of Centerville* analytical framework, the Court begins with the plain language of the constitutional text, "considering how the words and phrases would be understood by the voters in their normal and ordinary usage." *State v. Yerkey*, 2022-Ohio-4298 at ¶ 9 (quoting *City of Centerville* at ¶ 22). The term "victim" is defined as a person against whom a "criminal offense or delinquent act is committed or who is directly and proximately harmed by the commission of the offense or act."

Section 10a does not define "criminal offense or delinquent act," and thus, the language provides no textual limitations on what types of criminal offenses or delinquent acts against a "person" would satisfy the definition. For instance, there is no requirement that—to fall within the definition—a person against whom a criminal offense is committed suffer physical or economic harm. And a person may commit many criminal offenses against a police officer that would not be criminal offenses if committed against a private individual. *See, e.g., State v. Lazzaro*, 76 Ohio St.3d 261, 266, 667 N.E.2d 384 (1996) ("the making of an unsworn false oral statement to a public official with the purpose to mislead, hamper or impede the investigation of a crime is punishable conduct within the meaning of R.C. 2921.13(A)(3) and 2921.31(A)"); R.C. 2921.33 (resisting arrest); R.C. 2921.15 (false allegation of peace officer misconduct); R.C. 2921.331 (failure to comply with order or signal of police officer).

An Ohio voter would not likely have understood that an offense against a police officer, such as resisting arrest, would constitute a "criminal offense" within the meaning of Section 10a(D), as these kinds of offenses are really "against" the state. But if the word "person"

includes a police officer acting in their capacity as an agent of the state, and not just as a private citizen, there is no textual basis for concluding that the term "criminal offense" could not include such crimes. And this interpretation of Section 10a(D) would be inconsistent with the reasoning of the Court in *City of Centerville*, since it would turn the government into a "victim."

2. Ohio Voters Would Not Have Understood That the Rights
Afforded by Marsy's Law Apply to Police Officers Against Whom
Criminal Offenses Are Committed While Performing Their
Official Duties

Given the lack of limitations on what criminal offenses would turn someone into a victim, the scope of the term, as used in Section 10a(D), is thus unclear. "In cases in which the language of the provision is unclear or ambiguous, [the Court's] analysis may also include a review of the 'history of the amendment and the circumstances surrounding its adoption, the reason and necessity of the amendment, the goal the amendment seeks to achieve, and the remedy it seeks to provide.'" *Yerkey*, 2022-Ohio-4298 at ¶ 9 (quoting *City of Centerville* at ¶ 22). The Court will also "presume that the voters were aware of the laws in existence at the time they voted to adopt the constitutional amendment." *Id.*

Marsy's Law affords victims of crimes and their families rights intended "to ensure 'due process, respect, fairness, and justice for crime victims and their families.'" *City of Centerville* at ¶ 15. These are rights afforded to individuals against the state, and in most cases, require state actors to carry out. Moreover, in many cases, the rights assume lack of access to state information and resources.

For instance, Marsy's Law affords a victim the right "to reasonable protection from the accused or any person acting on behalf of the accused." Ohio Const., Art. I, § 10a(A)(4). As law enforcement officers are the state actors who would be charged with giving substance to this

right, an Ohio voter would have been unlikely to understand the term "victim" to include the same state actors charged with carrying out this mandate.

Similarly, Marsy's Law provides victims with the right to "reasonable notice of any release or escape of the accused." Ohio Const., Art. I, § 10a(A)(5). An Ohio voter would have likely believed that law enforcement officers would already have ready access to such information by virtue of their employment.

Marsy's Law also affords victims the right to restitution. This Court has previously interpreted the term "restitution" as used in Marsy's Law to mean "economic losses suffered by the victim as a direct and proximate result of the commission of the offense." *Yerkey*, 2022-Ohio-4298 at ¶ 1. An Ohio voter would have understood that a police officer who suffers injuries as a result of a criminal offense committed against them while performing their official duties would be entitled to recover economic losses, such as wage losses, under Ohio workers' compensation laws. *See, e.g., Smith v. City of Cleveland*, 8th Dist. Cuyahoga No. 78889, 2001 Ohio App. LEXIS 5516, at *13-16 (Dec. 13, 2001) (holding that off-duty police officer may be entitled to worker's compensation benefits when carrying out sworn duty to protect and citing similar cases). *See also McKinney v. Omni Die Casting, Inc.*, 2017-Ohio-2949, 91 N.E.3d 124, ¶ 43 (5th Dist.) ("a claimant has a constitutionally protected interest in his tort recovery only to the extent that it does not duplicate the amount paid by the BWC") (citing *Holeton v. Crouse Cartage Co.*, 92 Ohio St.3d 115, 2001-Ohio-109, 748 N.E.2d 1111).

This is in stark contrast to private citizens who become victims of crime, as they would not (in most cases) be able to recover their economic losses through workers' compensation. Accordingly, as Ohio voters are presumed to have known that workers'

compensation laws would cover police officers for economic losses suffered while performing their duties, it follows that they would not have understood there to be a need to afford police officers a right of restitution for criminal offenses committed against them while performing those duties.

The right of a victim "to be treated with fairness and respect for the victim's . . . privacy" is another right which a police officer already enjoyed due to special statutory rights not afforded private citizens who become victims of crimes. R.C. 2921.24, for example, makes it a misdemeanor for a law enforcement agency, court, or the clerk of court from disclosing "the home address of any peace officer . . . who is a witness or arresting officer in the case," unless ordered by the Court upon a finding of good cause. Similarly, R.C. 2921.25 prohibits a court from ordering a "peace officer" to disclose their home address during trial, unless the judge determines the defendant has a right to the disclosure. An Ohio voter approving Marsy's Law, and familiar with these existing special privacy rights for police officers, would have understood that police officers already stood in a different relationship to the criminal justice system in terms of the "respect" shown by that system for their privacy.

3. Affording Police Officers Against Whom Criminal Offenses are Committed While Performing Their Official Duties Rights Under Marsy's Law Would Conflict with their Duties

Affording the rights given by Marsy's Law to a police officer against whom a criminal offense is committed while performing their duties is also inconsistent with the types of duties CDP requires of its officers. This is particularly true for the right to "respect for the victim's . . . privacy."

Police officers are public servants. Consequently, when they take upon the role of a police officer, they agree to certain limitations on their ability to exercise their constitutional rights against the state. *See, e.g., City of San Diego v. Roe*, 543 U.S. 77, 80, 125 S.Ct. 521, 160 L.Ed.2d 410 (2004) ("a governmental employer may impose certain restraints on the speech of its employees, restraints that would be unconstitutional if applied to the general public").

CDP Directive 1.45, for example, provides that CDP personnel "shall give their name and badge/tech/IBM number to any person upon request" and that "[u]niformed sworn personnel shall display their identification card to any person upon request or as soon as safe and practical." Columbus Police Division Directive 1.45, *available at* <https://new.columbus.gov/files/sharedassets/city/v/2/public-safety/police/directives/divisiondirective1.01.pdf> (last visited March 13, 2024).³ The purpose for such a requirement is clear, as it fosters transparency, and thus, public confidence in those charged with exercising the police powers of the state.

Along similar lines, CDP officers assigned body-cams are to record their interactions with the public in most circumstances. (Jt. Ex. C, CDP Directive 11.07.) One of the purposes of doing so, as CDP's directive itself acknowledges, is "to provide transparency to the community." (*Id.* at pg. 1.)

Through the enactment of R.C. 2930.07, the General Assembly has provided "victims" protected by Marsy's Law with the right to prevent disclosure of their identifying information to the public,

³ To the extent necessary, The Dispatch asks that the Court take judicial notice of this CDP directive, as it is capable of accurate and ready determination by resort to CDP's own website, the accuracy of which cannot reasonably be questioned. Evid.R. 201.

reflecting a victim's right to be treated with respect for their privacy by the state. Ohio Const., Art. I, § 10a(A)(1). But the privacy rights of police officers against whom criminal offenses are committed while performing their public duties, and those of private citizens who are victims of crime, are not equivalent as a matter of practice and policy.

As a result, R.C. 2930.07, if construed to apply to police officers, would provide state actors with rights enforceable against Ohio citizens. *Cf. City of Centerville*, 2020-Ohio-5219 at ¶ 29 ("It seems incongruent in this context to interpret the word 'person' in the amendment in a way that would give the government rights enforceable against its own citizens."). As in this case, a police officer against whom a crime is committed, e.g., being shot at, may invoke this Marsy's Law-derived privacy right to prevent disclosure of otherwise public information about the police officer involved in the shooting in response to a public records request from a private Ohio citizen.

It is one thing to provide private citizens a right to prevent disclosure of information in public records as against other private citizens, but another entirely to provide state actors with that same right. It is very unlikely that Ohio voters, in approving Marsy's Law, would have understood that they were granting state actors any rights that might result in their being deprived of their existing right to obtain information about police officers through public records requests.

As this Court held in *City of Centerville*, the text and context of Marsy's Law leads to the conclusion that the Ohio voters who approved the constitutional amendment did not intend that a police officer against whom a criminal offense is committed while performing their official duties would constitute a "victim" entitled to the rights afforded by that section. Moreover, this

Court must strictly construe R.C. 2930.07 against CDP, which in turn requires strict construction of the term "victim" as used in Section 10a(D). And because CDP cannot show that the identifying information of the CDP officers involved in the I-70 Incident falls squarely within that exception, The Dispatch is entitled to a writ of mandamus compelling CDP to provide that information.

Proposition of Law No. III

If R.C. 2930.07 permits CDP to withhold identifying information about the police officers involved in the I-70 Incident, it unconstitutionally infringes on the right of the public to inspect public records protected by Section 1, 3, 11 and 16 of the Ohio Constitution.

CDP's invocation of R.C. 2930.07 to justify withholding identifying information about police officers involved in a use of force incident presents a grave threat to the public's right to know. As set forth above, an Ohio voter approving Marsy's Law in 2017 would not have understood that by approving the constitutional amendment, it would allow state actors to invoke the law against them, as has occurred in this case.

Since the OPRA was enacted, the number of enumerated exceptions to the definition of "public records" has expanded to 44. *See* R.C. 149.43(A)(1)(a)-(qq). The catch-all exception for "[r]ecords the release of which is prohibited by state or federal law," R.C. 149.43(A)(1)(v), increases the actual number of exceptions far beyond that.

Ohio citizens have long enjoyed the right to inspect their government's records. Indeed, the concept of "public records" dates back to the Northwest Territory Ordinance of 1787, which mentioned among the duties of a "Secretary," the keeping and preserving of "the public records of the district."

Prior to the enactment of the OPRA, the Ohio Supreme Court defined this right as follows:

Generally, those records in the custody of public officials which have been designated "public records" by the General Assembly are open to inspection by anyone at appropriate times, subject to the limitation that such inspection does not endanger the safety of the records or unreasonably interfere with the discharge of the duties of the officer having custody of the same.

State ex rel. Patterson, 171 Ohio St. 369, paragraph 1 of the syllabus. In a 1901 decision, a Cincinnati Superior Court judge characterized the right of inspection as a property right, and not a mere political one. *Wells*, 12 Ohio Dec. at 181 (holding that because records were held by the county auditor as trustee of the people of Hamilton County, the right of a citizen to inspect them "is the right to inspect property in which he has an interest . . .").

More recently, this Court has explained the central role public access to government records plays in Ohio's democracy. See *Kish*, 2006-Ohio-1244 at ¶¶ 15-17. The Court has explained:

Public records are one portal through which the people observe their government, ensuring its accountability, integrity, and equity while minimizing sovereign mischief and malfeasance. See, e.g., *State ex rel. Gannett Satellite Information Network, Inc. v. Petro* (1997), 80 Ohio St. 3d 261, 264, 1997 Ohio 319, 685 N.E.2d 1223; *State ex rel. Strothers v. Wertheim* (1997), 80 Ohio St.3d 155, 157, 1997 Ohio 349, 684 N.E.2d 1239. Public records afford an array of other utilitarian purposes necessary to a sophisticated democracy: they illuminate and foster understanding of the rationale underlying state decisions, *White*, 76 Ohio St.3d at 420, 667 N.E.2d 1223, promote cherished rights such as freedom of speech and press, *State ex rel. Dayton Newspapers, Inc. v. Phillips* (1976), 46 Ohio St.2d 457, 467, 75 Ohio Op. 2d 511, 351 N.E.2d 127, and "foster openness and * * * encourage the free flow of information where it is not prohibited by law." *State ex rel. The Miami Student v. Miami Univ.* (1997), 79 Ohio St.3d 168, 172, 1997 Ohio 386, 680 N.E.2d 956.

Id. at ¶ 16. Thus, the Court has held that "open access to government papers is an integral entitlement of the people, to be preserved with vigilance and vigor." *Id.* at ¶ 17.

The Ohio General Assembly is, as this Court has recognized, "the ultimate arbiter of policy considerations relevant to public-records law . . ." *Id.* at ¶ 44. Accordingly, the Court has recognized that "it is for the legislature to 'weigh [] and balance [] the competing public policy considerations between the public's right to know how its state agencies make decisions and the potential harm, inconvenience or burden imposed on the agency by disclosure.'" *Id.* (quoting *State ex rel. James v. Ohio State Univ.*, 70 Ohio St.3d 168, 172, 637 N.E.2d 911 (1994)).

Nevertheless, prior to the codification of the public's right of access in R.C. 149.43, *State ex rel. Natl. Broad. Co. v. City of Cleveland*, 38 Ohio St.3d 79, 81, 526 N.E.2d 786 (1988), this Court alluded to the potential existence of limits on how far the General Assembly may go in curtailing the public's right to inspect their records, *see State ex rel. Patterson* at 372 ("How far the General Assembly might go in limiting access to and inspection of public records is not now before us."). But the Court has never squarely addressed whether such limits exist. The Dispatch asks this Court to hold that a limit does exist, and that it may be found in the protections for property and free speech rights enumerated in the Ohio Constitution.

A. The Public's Right of Access to Its Government's Records is Protected by Article I, Sections 1, 3, 11, and 16 of the Ohio Constitution

If a citizen's right of access to its government's records is a mere common law right, and nothing more, then the General Assembly may simply legislate it out of existence. *See In re Estate of McWilson*, 155 Ohio St. 261, 266, 98 N.E.2d 289 (1951) ("The General Assembly unquestionably has the power to enact laws which modify or abrogate the common law."). But

courts that have considered the right of access to government records have described it as something more.

In *Wells v. Lewis*, the Cincinnati Superior Court considered whether a Hamilton County resident and taxpayer had a right to inspect records relating to property valuation held by the county auditor. 12 Ohio Dec. at 174. After holding that the plaintiff had the right to inspect the records, it next considered whether it could grant an injunction ordering the auditor to produce the records. *Id.* at 180. This issue was raised by the defendant-auditor, who contended that a court of equity could not issue an injunction for purely political rights, "but only for the protection of property and civil rights." *Id.*

In resolving the issue in the plaintiff's favor, the court explained that:

I am of the opinion that the books are held by the auditor as a trustee for the people of Hamilton county; and that the books belong to such people. The right of a citizen to inspect them, therefore, is the right to inspect property in which he has an interest, and such right may properly be protected by injunction.

Id. at 181. To remove any doubt that the court viewed the right as one based in property, the court reiterated that "the right upon which the inspection which may secure this information is based is a property right and not a political right." *Id.*

Property rights are protected by Article I, Sections 1 and 16 of the Ohio Constitution. *See Moore v. City of Middletown*, 133 Ohio St.3d 55, 2012-Ohio-3897, 975 N.E.2d 977, ¶¶ 37-40. Thus, the government's authority to intrude on property rights is predicated on the proper use of police powers, for the public welfare. *Id.* (addressing zoning ordinances). Legislation that intrudes upon an individual's right to inspect government records, at a minimum,

must not be arbitrary and unreasonable and have a substantial relation to public health or safety.
Id.

The right of access to government records also implicates the right "to instruct their representatives" and "to petition the general assembly for the redress of grievances" protected by Article I, Section 3. This Court suggested as much in *Kish*, acknowledging the role public records play in serving as a "portal through which the people observe their government, ensuring its accountability, integrity, and equity while minimizing sovereign mischief and malfeasance." 2006-Ohio-1244 at ¶ 16. Also closely related to the right to petition, the *Kish* Court observed that public records "illuminate and foster understanding of the rationale underlying state decisions[.]" *Id.* For this purpose, the Court reasoned that "[i]f the public can understand the rationale behind its government's decisions, it can challenge or criticize those decisions as it finds necessary . . ." *White v. Clinton Cty. Bd. of Commrs.*, 76 Ohio St.3d 416, 420, 667 N.E.2d 1223 (1996).

Public records serve a similar role with respect to the free speech rights protected by Article I, Section 11. The United States Supreme Court has opined that "[f]acts . . . are the beginning point for much of the speech that is most essential to advance human knowledge and to conduct human affairs." *Sorrell v. IMS Health*, 564 U.S. 552, 570, 131 S.Ct. 2653 (2011). This Court echoed that view in *Kish*, reasoning that public records "promote cherished rights such as freedom of speech and press, . . . *State ex rel. Dayton Newspapers, Inc. v. Phillips* (1976), 46 Ohio St.2d 457, 467, 75 Ohio Op. 2d 511, 351 N.E.2d 127, and 'foster openness and * * * encourage the free flow of information where it is not prohibited by law.'" 2006-Ohio-1244 at ¶ 16 (quoting *State ex rel. The Miami Student v. Miami Univ.*, 79 Ohio St.3d 168, 172, 680 N.E.2d 956 (1997)). As one federal court of appeals remarked, "[g]athering information about

government officials in a form that can readily be disseminated to others serves a cardinal First Amendment interest in protecting and promoting 'the free discussion of governmental affairs.'" *Glik v. Cunniffe*, 655 F.3d 78, 82 (1st Cir.2011) (quoting *Mills v. Alabama*, 384 U.S. 214, 218, 86 S. Ct. 1434 (1966)).

The important role public records play in promoting democracy and public discourse, against prior recognition of a citizen's protectable property right in the people's records, supports recognition of constitutional protection for the right.

B. The Court Should Review R.C. 2930.07 on the Facts of This Case Under a Heightened Level of Scrutiny

Knowing the identities of police officers involved in a use of force incident allows a newspaper, like Relator, to investigate an officer's training, prior use of force incidents, disciplinary history, public statements, and other information that informs the public debate about issues such as crime prevention, police reform, and civil rights. *See, e.g., Klein v. Madison*, E.D.Pa. No. 17-4507, 2018 U.S. Dist. LEXIS 121420, at *6 (July 20, 2018) (holding that "the public interest in the proper use of force by police officers, the investigation of complaints regarding excessive force and in alleged false reporting by police officers and other public officials is exceptionally strong"). Thus, the information withheld by CDP based on R.C. 2930.07 in this case implicates core political speech protected by Section 11. *Bowling Green v. Lodico*, 11 Ohio St.2d 135, 140, 228 N.E.2d 325 (1967) ("The constitutional safeguard [of free speech] . . . was fashioned to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people . . .") (quoting *New York Times Co. v. Sullivan*, 376 U.S. 254, 269 (1964)). A heightened level of scrutiny is therefore appropriate.

Under intermediate scrutiny, legislation "(1) must be narrowly tailored to serve a significant government interest, and further, it (2) must leave open alternative means of exercising the right." *State v. Henderson*, 11th Dist. Portage No. 2010-P-0046, 2012-Ohio-1268, ¶ 52 (quoting *Perry Ed. Assn. v. Perry Local Educators' Assn.*, 460 U.S. 37, 45, 103 S.Ct. 948 (1983)). Under strict scrutiny, "a statute will be considered unconstitutional unless it is shown to be necessary to promote a compelling governmental interest." *Sorrell v. Thevenir*, 69 Ohio St.3d 415, 423, 633 N.E.2d 504 (1994). R.C. 2930.07, as applied to the information withheld in this case, does not satisfy either standard.

First, R.C. 2930.07 is not narrowly tailored. It permits a police department to withhold identifying information about police officers against whom criminal offenses are committed without limitation. The statute does not require that the criminal offense be a violent one, or that the police officer has a reason to be concerned for their safety as a result of having had the criminal offense committed against them. It is merely a police officer's status as a "victim" under Marsy's Law that entitles them to require that their names be withheld from the public.

Second, absent a threat to the police officer's life, or other due process concern, the state has no significant, much less a compelling interest, in legislation that would allow the state to withhold the identities of police officers against whom criminal offenses are committed while performing their official duties. The state already has the ability to shield personal information about a police officer when necessary to protect that officer from harm. *State ex rel. Keller v. Cox*, 85 Ohio St.3d 279, 282, 707 N.E.2d 931 (1999) (holding that police officers' files that contain names of the officers' children, spouses, and other personal information are exempt from disclosure under the OPRA based on officers' due process rights). R.C. 2930.07 would allow the

state to withhold identifying information about police officers any time it could show that a "criminal offense" was committed against the officer.

Last, R.C. 2930.07 does not leave open any alternative means of obtaining the identifying information. The right afforded under R.C. 2930.07(D)(1)(a)(i) does not expire, allowing a law enforcement agency to permanently withhold identifying information about police officers involved in use of force incidents.

Accordingly, because R.C. 2930.07 does not satisfy intermediate scrutiny, the Court should hold that it is unconstitutional, and direct CDP to produce the identifying information of the police officers contained in the I-70 Incident Footage.

C. R.C. 2930.07 as Applied to the Information Withheld in this Case is Arbitrary and Unreasonable, and Fails to Satisfy the more Deferential Rational Basis Review

Under the Court's rational-basis test, "a statute will be upheld if it is rationally related to a legitimate government interest purpose and is not unreasonable or arbitrary." *Stetter v. R.J. Corman Derailment Servs., LLC*, 125 Ohio St.3d 280, 2010-Ohio-1029, 927 N.E.2d 1092, ¶ 71. In conducting this review, the Court considers "whether the General Assembly's purposes in enacting the legislation at issue provide adequate support to justify the statute's effects." *Id.* (quoting *Groch v. GMC*, 117 Ohio St.3d 192, 2008-Ohio-546, 883 N.E.2d 377, ¶ 157).

The effect of the legislation is depriving the public of identifying information about police officers in public records whenever a criminal offense or delinquent act is committed against the police officer or is "directly and proximately harmed by the commission of the offense or act." The legislation does this by merely incorporating the definition of "victim" used in Marsy's Law. Nothing in the extensive legislative history associated with 2022

Sub.H.B. No. 343 suggests that any consideration was given to the effect the legislation would have on the public's right to obtain information about state actors under the OPRA, such as police officers. *See, e.g.*, Ohio Legislative Service Commission, Final Analysis of H.B. No. 343, at 32-34 (Apr. 6, 2023) (analyzing law's public records redaction requirements).

As there is no evidence in the statute, or the legislative history, that the result advanced by CDP was considered by the General Assembly, it is difficult to divine how the General Assembly might have justified those effects. The Court may avoid this by interpreting the term "victim" to avoid this result, and thus avoid the constitutional question entirely. *State ex rel. Clay v. Cuyahoga Cty. Med. Examiner's Office*, 152 Ohio St.3d 163, 2017-Ohio-8714, 94 N.E.3d 498, ¶ 26. But to the extent the Court finds it is bound to interpret that the term "victim," as defined in Article I, Section 10a, includes police officers against whom offenses are committed while performing their duties, the General Assembly's failure to account for this effect compels the conclusion that the legislation is both arbitrary and unreasonable, as applied to the facts before this Court.

Accordingly, to the extent the Court determines that the term "victim" includes police officers against whom offenses are committed under the circumstances involved here, The Dispatch respectfully asks that the Court hold R.C. 2930.07 unconstitutional as applied to the identifying information of the CDP officers contained in the I-70 Incident Footage, and direct CDP to release that information.

IV. CONCLUSION

For the reasons set forth, Relator respectfully requests that the Court GRANT the writ of mandamus sought by its Complaint and direct Respondent to provide all information in the I-70 Incident Footage withheld under R.C. 2930.07.

Respectfully submitted,

/s/ Darren W. Ford

John C. Greiner (0005551)

Counsel of Record

Darren W. Ford (0086449)

FARUKI PLL

201 East Fifth Street, Suite 1420

Cincinnati, OH 45202

Telephone: (513) 632-0315

Fax: (513) 632-0319

Email: jgreiner@ficlaw.com

dford@ficlaw.com

Counsel for Relator

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Relator's Merit Brief has been served via electronic mail pursuant to Sup.Ct.Prac.R. 3.11(C) upon the following counsel of record this 14th day of March 2024:

Aaron D. Epstein, Esq.
Joshua P. Monroe, Esq.
Assistant City Attorneys
77 N. Front St., 4th Floor
Columbus, OH 43215
adeptstein@columbus.gov
jpmonroe@columbus.gov

*Counsel for Respondent,
The City of Columbus, Division of Police*

/s/ Darren W. Ford
Darren W. Ford (0086449)

4858-9435-7164.2

APPENDIX

Article I, Section 1 | Inalienable Rights

[Ohio Constitution](#) / [Article I Bill of Rights](#)

Effective: 1851

All men are, by nature, free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and seeking and obtaining happiness and safety.

Article I, Section 3 | Right to assemble

[Ohio Constitution](#) / [Article I Bill of Rights](#)

Effective: 1851

The people have the right to assemble together, in a peaceable manner, to consult for their common good; to instruct their representatives; and to petition the general assembly for the redress of grievances.

Article I, Section 10a | Rights of victims of crime

[Ohio Constitution](#) / [Article I Bill of Rights](#)

Effective: 2017

(A) To secure for victims justice and due process throughout the criminal and juvenile justice systems, a victim shall have the following rights, which shall be protected in a manner no less vigorous than the rights afforded to the accused:

- (1) to be treated with fairness and respect for the victim's safety, dignity and privacy;
- (2) upon request, to reasonable and timely notice of all public proceedings involving the criminal offense or delinquent act against the victim, and to be present at all such proceedings;
- (3) to be heard in any public proceeding involving release, plea, sentencing, disposition, or parole, or in any public proceeding in which a right of the victim is implicated;
- (4) to reasonable protection from the accused or any person acting on behalf of the accused;
- (5) upon request, to reasonable notice of any release or escape of the accused;
- (6) except as authorized by section 10 of Article I of this constitution, to refuse an interview, deposition, or other discovery request made by the accused or any person acting on behalf of the accused;
- (7) to full and timely restitution from the person who committed the criminal offense or delinquent act against the victim;
- (8) to proceedings free from unreasonable delay and a prompt conclusion of the case;
- (9) upon request, to confer with the attorney for the government; and
- (10) to be informed, in writing, of all rights enumerated in this section.

(B) The victim, the attorney for the government upon request of the victim, or the victim's other lawful representative, in any proceeding involving the criminal offense or delinquent act against the victim or in which the victim's rights are implicated, may assert the rights enumerated in this section and any other right afforded to the victim by law. If the relief sought is denied, the victim or the victim's lawful representative may petition the court of appeals for the applicable district, which shall promptly consider and decide the petition.

(C) This section does not create any cause of action for damages or compensation against the state, any political subdivision of the state, any officer, employee, or agent of the state or of any political subdivision, or any officer of the court.

(D) As used in this section, "victim" means a person against whom the criminal offense or delinquent act is committed or who is directly and proximately harmed by the commission of the offense or act. The term "victim" does not include the accused or a person whom the court finds would not act in the best interests of a deceased, incompetent, minor, or incapacitated victim.

(E) All provisions of this section shall be self-executing and severable, and shall supersede all conflicting state laws.

(F) This section shall take effect ninety days after the election at which it was approved.

Article I, Section 11 | Freedom of speech; of the press; of libels

[Ohio Constitution](#) / [Article I Bill of Rights](#)

Effective: 1851

Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of the right; and no law shall be passed to restrain or abridge the liberty of speech, or of the press. In all criminal prosecutions for libel, the truth may be given in evidence to the jury, and if it shall appear to the jury, that the matter charged as libelous is true, and was published with good motives, and for justifiable ends, the party shall be acquitted.

Article I, Section 16 | Redress for injury; Due process

[Ohio Constitution](#) / [Article I Bill of Rights](#)

Effective: 1912

All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay.

Suits may be brought against the state, in such courts and in such manner, as may be provided by law.



Ohio Revised Code

Section 149.43 Availability of public records for inspection and copying.

Effective: October 3, 2023

Legislation: House Bill 33

(A) As used in this section:

(1) "Public record" means records kept by any public office, including, but not limited to, state, county, city, village, township, and school district units, and records pertaining to the delivery of educational services by an alternative school in this state kept by the nonprofit or for-profit entity operating the alternative school pursuant to section 3313.533 of the Revised Code. "Public record" does not mean any of the following:

(a) Medical records;

(b) Records pertaining to probation and parole proceedings, to proceedings related to the imposition of community control sanctions and post-release control sanctions, or to proceedings related to determinations under section 2967.271 of the Revised Code regarding the release or maintained incarceration of an offender to whom that section applies;

(c) Records pertaining to actions under section 2151.85 and division (C) of section 2919.121 of the Revised Code and to appeals of actions arising under those sections;

(d) Records pertaining to adoption proceedings, including the contents of an adoption file maintained by the department of health under sections 3705.12 to 3705.124 of the Revised Code;

(e) Information in a record contained in the putative father registry established by section 3107.062 of the Revised Code, regardless of whether the information is held by the department of job and family services or, pursuant to section 3111.69 of the Revised Code, the office of child support in the department or a child support enforcement agency;

(f) Records specified in division (A) of section 3107.52 of the Revised Code;



- (g) Trial preparation records;
- (h) Confidential law enforcement investigatory records;
- (i) Records containing information that is confidential under section 2710.03 or 4112.05 of the Revised Code;
- (j) DNA records stored in the DNA database pursuant to section 109.573 of the Revised Code;
- (k) Inmate records released by the department of rehabilitation and correction to the department of youth services or a court of record pursuant to division (E) of section 5120.21 of the Revised Code;
- (l) Records maintained by the department of youth services pertaining to children in its custody released by the department of youth services to the department of rehabilitation and correction pursuant to section 5139.05 of the Revised Code;
- (m) Intellectual property records;
- (n) Donor profile records;
- (o) Records maintained by the department of job and family services pursuant to section 3121.894 of the Revised Code;
- (p) Designated public service worker residential and familial information;
- (q) In the case of a county hospital operated pursuant to Chapter 339. of the Revised Code or a municipal hospital operated pursuant to Chapter 749. of the Revised Code, information that constitutes a trade secret, as defined in section 1333.61 of the Revised Code;
- (r) Information pertaining to the recreational activities of a person under the age of eighteen;
- (s) In the case of a child fatality review board acting under sections 307.621 to 307.629 of the Revised Code or a review conducted pursuant to guidelines established by the director of health



under section 3701.70 of the Revised Code, records provided to the board or director, statements made by board members during meetings of the board or by persons participating in the director's review, and all work products of the board or director, and in the case of a child fatality review board, child fatality review data submitted by the board to the department of health or a national child death review database, other than the report prepared pursuant to division (A) of section 307.626 of the Revised Code;

(t) Records provided to and statements made by the executive director of a public children services agency or a prosecuting attorney acting pursuant to section 5153.171 of the Revised Code other than the information released under that section;

(u) Test materials, examinations, or evaluation tools used in an examination for licensure as a nursing home administrator that the board of executives of long-term services and supports administers under section 4751.15 of the Revised Code or contracts under that section with a private or government entity to administer;

(v) Records the release of which is prohibited by state or federal law;

(w) Proprietary information of or relating to any person that is submitted to or compiled by the Ohio venture capital authority created under section 150.01 of the Revised Code;

(x) Financial statements and data any person submits for any purpose to the Ohio housing finance agency or the controlling board in connection with applying for, receiving, or accounting for financial assistance from the agency, and information that identifies any individual who benefits directly or indirectly from financial assistance from the agency;

(y) Records listed in section 5101.29 of the Revised Code;

(z) Discharges recorded with a county recorder under section 317.24 of the Revised Code, as specified in division (B)(2) of that section;

(aa) Usage information including names and addresses of specific residential and commercial customers of a municipally owned or operated public utility;



(bb) Records described in division (C) of section 187.04 of the Revised Code that are not designated to be made available to the public as provided in that division;

(cc) Information and records that are made confidential, privileged, and not subject to disclosure under divisions (B) and (C) of section 2949.221 of the Revised Code;

(dd) Personal information, as defined in section 149.45 of the Revised Code;

(ee) The confidential name, address, and other personally identifiable information of a program participant in the address confidentiality program established under sections 111.41 to 111.47 of the Revised Code, including the contents of any application for absent voter's ballots, absent voter's ballot identification envelope statement of voter, or provisional ballot affirmation completed by a program participant who has a confidential voter registration record; records or portions of records pertaining to that program that identify the number of program participants that reside within a precinct, ward, township, municipal corporation, county, or any other geographic area smaller than the state; and any real property confidentiality notice filed under section 111.431 of the Revised Code and the information described in division (C) of that section. As used in this division, "confidential address" and "program participant" have the meaning defined in section 111.41 of the Revised Code.

(ff) Orders for active military service of an individual serving or with previous service in the armed forces of the United States, including a reserve component, or the Ohio organized militia, except that, such order becomes a public record on the day that is fifteen years after the published date or effective date of the call to order;

(gg) The name, address, contact information, or other personal information of an individual who is less than eighteen years of age that is included in any record related to a traffic accident involving a school vehicle in which the individual was an occupant at the time of the accident;

(hh) Protected health information, as defined in 45 C.F.R. 160.103, that is in a claim for payment for a health care product, service, or procedure, as well as any other health claims data in another document that reveals the identity of an individual who is the subject of the data or could be used to



reveal that individual's identity;

(ii) Any depiction by photograph, film, videotape, or printed or digital image under either of the following circumstances:

(i) The depiction is that of a victim of an offense the release of which would be, to a reasonable person of ordinary sensibilities, an offensive and objectionable intrusion into the victim's expectation of bodily privacy and integrity.

(ii) The depiction captures or depicts the victim of a sexually oriented offense, as defined in section 2950.01 of the Revised Code, at the actual occurrence of that offense.

(jj) Restricted portions of a body-worn camera or dashboard camera recording;

(kk) In the case of a fetal-infant mortality review board acting under sections 3707.70 to 3707.77 of the Revised Code, records, documents, reports, or other information presented to the board or a person abstracting such materials on the board's behalf, statements made by review board members during board meetings, all work products of the board, and data submitted by the board to the department of health or a national infant death review database, other than the report prepared pursuant to section 3707.77 of the Revised Code.

(ll) Records, documents, reports, or other information presented to the pregnancy-associated mortality review board established under section 3738.01 of the Revised Code, statements made by board members during board meetings, all work products of the board, and data submitted by the board to the department of health, other than the biennial reports prepared under section 3738.08 of the Revised Code;

(mm) Except as otherwise provided in division (A)(1)(oo) of this section, telephone numbers for a victim, as defined in section 2930.01 of the Revised Code or a witness to a crime that are listed on any law enforcement record or report.

(nn) A preneed funeral contract, as defined in section 4717.01 of the Revised Code, and contract terms and personally identifying information of a preneed funeral contract, that is contained in a



report submitted by or for a funeral home to the board of embalmers and funeral directors under division (C) of section 4717.13, division (J) of section 4717.31, or section 4717.41 of the Revised Code.

(oo) Telephone numbers for a party to a motor vehicle accident subject to the requirements of section 5502.11 of the Revised Code that are listed on any law enforcement record or report, except that the telephone numbers described in this division are not excluded from the definition of "public record" under this division on and after the thirtieth day after the occurrence of the motor vehicle accident.

(pp) Records pertaining to individuals who complete training under section 5502.703 of the Revised Code to be permitted by a school district board of education or governing body of a community school established under Chapter 3314. of the Revised Code, a STEM school established under Chapter 3326. of the Revised Code, or a chartered nonpublic school to convey deadly weapons or dangerous ordnance into a school safety zone;

(qq) Records, documents, reports, or other information presented to a domestic violence fatality review board established under section 307.651 of the Revised Code, statements made by board members during board meetings, all work products of the board, and data submitted by the board to the department of health, other than a report prepared pursuant to section 307.656 of the Revised Code;

(rr) Records, documents, and information the release of which is prohibited under sections 2930.04 and 2930.07 of the Revised Code;

(ss) Records of an existing qualified nonprofit corporation that creates a special improvement district under Chapter 1710. of the Revised Code that do not pertain to a purpose for which the district is created.

A record that is not a public record under division (A)(1) of this section and that, under law, is permanently retained becomes a public record on the day that is seventy-five years after the day on which the record was created, except for any record protected by the attorney-client privilege, a trial preparation record as defined in this section, a statement prohibiting the release of identifying information signed under section 3107.083 of the Revised Code, a denial of release form filed



pursuant to section 3107.46 of the Revised Code, or any record that is exempt from release or disclosure under section 149.433 of the Revised Code. If the record is a birth certificate and a biological parent's name redaction request form has been accepted under section 3107.391 of the Revised Code, the name of that parent shall be redacted from the birth certificate before it is released under this paragraph. If any other section of the Revised Code establishes a time period for disclosure of a record that conflicts with the time period specified in this section, the time period in the other section prevails.

(2) "Confidential law enforcement investigatory record" means any record that pertains to a law enforcement matter of a criminal, quasi-criminal, civil, or administrative nature, but only to the extent that the release of the record would create a high probability of disclosure of any of the following:

(a) The identity of a suspect who has not been charged with the offense to which the record pertains, or of an information source or witness to whom confidentiality has been reasonably promised;

(b) Information provided by an information source or witness to whom confidentiality has been reasonably promised, which information would reasonably tend to disclose the source's or witness's identity;

(c) Specific confidential investigatory techniques or procedures or specific investigatory work product;

(d) Information that would endanger the life or physical safety of law enforcement personnel, a crime victim, a witness, or a confidential information source.

(3) "Medical record" means any document or combination of documents, except births, deaths, and the fact of admission to or discharge from a hospital, that pertains to the medical history, diagnosis, prognosis, or medical condition of a patient and that is generated and maintained in the process of medical treatment.

(4) "Trial preparation record" means any record that contains information that is specifically compiled in reasonable anticipation of, or in defense of, a civil or criminal action or proceeding,



including the independent thought processes and personal trial preparation of an attorney.

(5) "Intellectual property record" means a record, other than a financial or administrative record, that is produced or collected by or for faculty or staff of a state institution of higher learning in the conduct of or as a result of study or research on an educational, commercial, scientific, artistic, technical, or scholarly issue, regardless of whether the study or research was sponsored by the institution alone or in conjunction with a governmental body or private concern, and that has not been publicly released, published, or patented.

(6) "Donor profile record" means all records about donors or potential donors to a public institution of higher education except the names and reported addresses of the actual donors and the date, amount, and conditions of the actual donation.

(7) "Designated public service worker" means a peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, county or multicounty corrections officer, community-based correctional facility employee, designated Ohio national guard member, protective services worker, youth services employee, firefighter, EMT, medical director or member of a cooperating physician advisory board of an emergency medical service organization, state board of pharmacy employee, investigator of the bureau of criminal identification and investigation, emergency service telecommunicator, forensic mental health provider, mental health evaluation provider, regional psychiatric hospital employee, judge, magistrate, or federal law enforcement officer.

(8) "Designated public service worker residential and familial information" means any information that discloses any of the following about a designated public service worker:

(a) The address of the actual personal residence of a designated public service worker, except for the following information:

(i) The address of the actual personal residence of a prosecuting attorney or judge; and

(ii) The state or political subdivision in which a designated public service worker resides.



- (b) Information compiled from referral to or participation in an employee assistance program;
 - (c) The social security number, the residential telephone number, any bank account, debit card, charge card, or credit card number, or the emergency telephone number of, or any medical information pertaining to, a designated public service worker;
 - (d) The name of any beneficiary of employment benefits, including, but not limited to, life insurance benefits, provided to a designated public service worker by the designated public service worker's employer;
 - (e) The identity and amount of any charitable or employment benefit deduction made by the designated public service worker's employer from the designated public service worker's compensation, unless the amount of the deduction is required by state or federal law;
 - (f) The name, the residential address, the name of the employer, the address of the employer, the social security number, the residential telephone number, any bank account, debit card, charge card, or credit card number, or the emergency telephone number of the spouse, a former spouse, or any child of a designated public service worker;
 - (g) A photograph of a peace officer who holds a position or has an assignment that may include undercover or plain clothes positions or assignments as determined by the peace officer's appointing authority.
- (9) As used in divisions (A)(7) and (15) to (17) of this section:

"Peace officer" has the meaning defined in section 109.71 of the Revised Code and also includes the superintendent and troopers of the state highway patrol; it does not include the sheriff of a county or a supervisory employee who, in the absence of the sheriff, is authorized to stand in for, exercise the authority of, and perform the duties of the sheriff.

"Correctional employee" means any employee of the department of rehabilitation and correction who in the course of performing the employee's job duties has or has had contact with inmates and persons under supervision.



"County or multicounty corrections officer" means any corrections officer employed by any county or multicounty correctional facility.

"Designated Ohio national guard member" means a member of the Ohio national guard who is participating in duties related to remotely piloted aircraft, including, but not limited to, pilots, sensor operators, and mission intelligence personnel, duties related to special forces operations, or duties related to cybersecurity, and is designated by the adjutant general as a designated public service worker for those purposes.

"Protective services worker" means any employee of a county agency who is responsible for child protective services, child support services, or adult protective services.

"Youth services employee" means any employee of the department of youth services who in the course of performing the employee's job duties has or has had contact with children committed to the custody of the department of youth services.

"Firefighter" means any regular, paid or volunteer, member of a lawfully constituted fire department of a municipal corporation, township, fire district, or village.

"EMT" means EMTs-basic, EMTs-I, and paramedics that provide emergency medical services for a public emergency medical service organization. "Emergency medical service organization," "EMT-basic," "EMT-I," and "paramedic" have the meanings defined in section 4765.01 of the Revised Code.

"Investigator of the bureau of criminal identification and investigation" has the meaning defined in section 2903.11 of the Revised Code.

"Emergency service telecommunicator" means an individual employed by an emergency service provider as defined under section 128.01 of the Revised Code, whose primary responsibility is to be an operator for the receipt or processing of calls for emergency services made by telephone, radio, or other electronic means.



"Forensic mental health provider" means any employee of a community mental health service provider or local alcohol, drug addiction, and mental health services board who, in the course of the employee's duties, has contact with persons committed to a local alcohol, drug addiction, and mental health services board by a court order pursuant to section 2945.38, 2945.39, 2945.40, or 2945.402 of the Revised Code.

"Mental health evaluation provider" means an individual who, under Chapter 5122. of the Revised Code, examines a respondent who is alleged to be a mentally ill person subject to court order, as defined in section 5122.01 of the Revised Code, and reports to the probate court the respondent's mental condition.

"Regional psychiatric hospital employee" means any employee of the department of mental health and addiction services who, in the course of performing the employee's duties, has contact with patients committed to the department of mental health and addiction services by a court order pursuant to section 2945.38, 2945.39, 2945.40, or 2945.402 of the Revised Code.

"Federal law enforcement officer" has the meaning defined in section 9.88 of the Revised Code.

(10) "Information pertaining to the recreational activities of a person under the age of eighteen" means information that is kept in the ordinary course of business by a public office, that pertains to the recreational activities of a person under the age of eighteen years, and that discloses any of the following:

(a) The address or telephone number of a person under the age of eighteen or the address or telephone number of that person's parent, guardian, custodian, or emergency contact person;

(b) The social security number, birth date, or photographic image of a person under the age of eighteen;

(c) Any medical record, history, or information pertaining to a person under the age of eighteen;

(d) Any additional information sought or required about a person under the age of eighteen for the purpose of allowing that person to participate in any recreational activity conducted or sponsored by



a public office or to use or obtain admission privileges to any recreational facility owned or operated by a public office.

(11) "Community control sanction" has the meaning defined in section 2929.01 of the Revised Code.

(12) "Post-release control sanction" has the meaning defined in section 2967.01 of the Revised Code.

(13) "Redaction" means obscuring or deleting any information that is exempt from the duty to permit public inspection or copying from an item that otherwise meets the definition of a "record" in section 149.011 of the Revised Code.

(14) "Designee," "elected official," and "future official" have the meanings defined in section 109.43 of the Revised Code.

(15) "Body-worn camera" means a visual and audio recording device worn on the person of a correctional employee, youth services employee, or peace officer while the correctional employee, youth services employee, or peace officer is engaged in the performance of official duties.

(16) "Dashboard camera" means a visual and audio recording device mounted on a peace officer's vehicle or vessel that is used while the peace officer is engaged in the performance of the peace officer's duties.

(17) "Restricted portions of a body-worn camera or dashboard camera recording" means any visual or audio portion of a body-worn camera or dashboard camera recording that shows, communicates, or discloses any of the following:

(a) The image or identity of a child or information that could lead to the identification of a child who is a primary subject of the recording when the department of rehabilitation and correction, department of youth services, or the law enforcement agency knows or has reason to know the person is a child based on the department's or law enforcement agency's records or the content of the recording;



(b) The death of a person or a deceased person's body, unless the death was caused by a correctional employee, youth services employee, or peace officer or, subject to division (H)(1) of this section, the consent of the decedent's executor or administrator has been obtained;

(c) The death of a correctional employee, youth services employee, peace officer, firefighter, paramedic, or other first responder, occurring while the decedent was engaged in the performance of official duties, unless, subject to division (H)(1) of this section, the consent of the decedent's executor or administrator has been obtained;

(d) Grievous bodily harm, unless the injury was effected by a correctional employee, youth services employee, or peace officer or, subject to division (H)(1) of this section, the consent of the injured person or the injured person's guardian has been obtained;

(e) An act of severe violence against a person that results in serious physical harm to the person, unless the act and injury was effected by a correctional employee, youth services employee, or peace officer or, subject to division (H)(1) of this section, the consent of the injured person or the injured person's guardian has been obtained;

(f) Grievous bodily harm to a correctional employee, youth services employee, peace officer, firefighter, paramedic, or other first responder, occurring while the injured person was engaged in the performance of official duties, unless, subject to division (H)(1) of this section, the consent of the injured person or the injured person's guardian has been obtained;

(g) An act of severe violence resulting in serious physical harm against a correctional employee, youth services employee, peace officer, firefighter, paramedic, or other first responder, occurring while the injured person was engaged in the performance of official duties, unless, subject to division (H)(1) of this section, the consent of the injured person or the injured person's guardian has been obtained;

(h) A person's nude body, unless, subject to division (H)(1) of this section, the person's consent has been obtained;



- (i) Protected health information, the identity of a person in a health care facility who is not the subject of a correctional, youth services, or law enforcement encounter, or any other information in a health care facility that could identify a person who is not the subject of a correctional, youth services, or law enforcement encounter;
- (j) Information that could identify the alleged victim of a sex offense, menacing by stalking, or domestic violence;
- (k) Information, that does not constitute a confidential law enforcement investigatory record, that could identify a person who provides sensitive or confidential information to the department of rehabilitation and correction, the department of youth services, or a law enforcement agency when the disclosure of the person's identity or the information provided could reasonably be expected to threaten or endanger the safety or property of the person or another person;
- (l) Personal information of a person who is not arrested, cited, charged, or issued a written warning by a peace officer;
- (m) Proprietary correctional, youth services, or police contingency plans or tactics that are intended to prevent crime and maintain public order and safety;
- (n) A personal conversation unrelated to work between correctional employees, youth services employees, or peace officers or between a correctional employee, youth services employee, or peace officer and an employee of a law enforcement agency;
- (o) A conversation between a correctional employee, youth services employee, or peace officer and a member of the public that does not concern correctional, youth services, or law enforcement activities;
- (p) The interior of a residence, unless the interior of a residence is the location of an adversarial encounter with, or a use of force by, a correctional employee, youth services employee, or peace officer;
- (q) Any portion of the interior of a private business that is not open to the public, unless an



adversarial encounter with, or a use of force by, a correctional employee, youth services employee, or peace officer occurs in that location.

As used in division (A)(17) of this section:

"Grievous bodily harm" has the same meaning as in section 5924.120 of the Revised Code.

"Health care facility" has the same meaning as in section 1337.11 of the Revised Code.

"Protected health information" has the same meaning as in 45 C.F.R. 160.103.

"Law enforcement agency" means a government entity that employs peace officers to perform law enforcement duties.

"Personal information" means any government-issued identification number, date of birth, address, financial information, or criminal justice information from the law enforcement automated data system or similar databases.

"Sex offense" has the same meaning as in section 2907.10 of the Revised Code.

"Firefighter," "paramedic," and "first responder" have the same meanings as in section 4765.01 of the Revised Code.

(B)(1) Upon request by any person and subject to division (B)(8) of this section, all public records responsive to the request shall be promptly prepared and made available for inspection to the requester at all reasonable times during regular business hours. Subject to division (B)(8) of this section, upon request by any person, a public office or person responsible for public records shall make copies of the requested public record available to the requester at cost and within a reasonable period of time. If a public record contains information that is exempt from the duty to permit public inspection or to copy the public record, the public office or the person responsible for the public record shall make available all of the information within the public record that is not exempt. When making that public record available for public inspection or copying that public record, the public office or the person responsible for the public record shall notify the requester of any redaction or



make the redaction plainly visible. A redaction shall be deemed a denial of a request to inspect or copy the redacted information, except if federal or state law authorizes or requires a public office to make the redaction. When the auditor of state receives a request to inspect or to make a copy of a record that was provided to the auditor of state for purposes of an audit, but the original public office has asserted to the auditor of state that the record is not a public record, the auditor of state may handle the requests by directing the requestor to the original public office that provided the record to the auditor of state.

(2) To facilitate broader access to public records, a public office or the person responsible for public records shall organize and maintain public records in a manner that they can be made available for inspection or copying in accordance with division (B) of this section. A public office also shall have available a copy of its current records retention schedule at a location readily available to the public. If a requester makes an ambiguous or overly broad request or has difficulty in making a request for copies or inspection of public records under this section such that the public office or the person responsible for the requested public record cannot reasonably identify what public records are being requested, the public office or the person responsible for the requested public record may deny the request but shall provide the requester with an opportunity to revise the request by informing the requester of the manner in which records are maintained by the public office and accessed in the ordinary course of the public office's or person's duties.

(3) If a request is ultimately denied, in part or in whole, the public office or the person responsible for the requested public record shall provide the requester with an explanation, including legal authority, setting forth why the request was denied. If the initial request was provided in writing, the explanation also shall be provided to the requester in writing. The explanation shall not preclude the public office or the person responsible for the requested public record from relying upon additional reasons or legal authority in defending an action commenced under division (C) of this section.

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



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

(6) If any person requests a copy of a public record in accordance with division (B) of this section, the public office or person responsible for the public record may require the requester to pay in advance the cost involved in providing the copy of the public record in accordance with the choice made by the requester under this division. The public office or the person responsible for the public record shall permit the requester to choose to have the public record duplicated upon paper, upon the same medium upon which the public office or person responsible for the public record keeps it, or upon any other medium upon which the public office or person responsible for the public record determines that it reasonably can be duplicated as an integral part of the normal operations of the public office or person responsible for the public record. When the requester makes a choice under this division, the public office or person responsible for the public record shall provide a copy of it in accordance with the choice made by the requester. Nothing in this section requires a public office or person responsible for the public record to allow the requester of a copy of the public record to make the copies of the public record.

(7)(a) Upon a request made in accordance with division (B) of this section and subject to division (B)(6) of this section, a public office or person responsible for public records shall transmit a copy of a public record to any person by United States mail or by any other means of delivery or transmission within a reasonable period of time after receiving the request for the copy. The public office or person responsible for the public record may require the person making the request to pay in advance the cost of postage if the copy is transmitted by United States mail or the cost of delivery if the copy is transmitted other than by United States mail, and to pay in advance the costs incurred for other supplies used in the mailing, delivery, or transmission.

(b) Any public office may adopt a policy and procedures that it will follow in transmitting, within a reasonable period of time after receiving a request, copies of public records by United States mail or



by any other means of delivery or transmission pursuant to division (B)(7) of this section. A public office that adopts a policy and procedures under division (B)(7) of this section shall comply with them in performing its duties under that division.

(c) In any policy and procedures adopted under division (B)(7) of this section:

(i) A public office may limit the number of records requested by a person that the office will physically deliver by United States mail or by another delivery service to ten 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;

(ii) A public office that chooses to provide some or all of its public records on a web site that is fully accessible to and searchable by members of the public at all times, other than during acts of God outside the public office's control or maintenance, and that charges no fee to search, access, download, or otherwise receive records provided on the web site, may limit to ten per month the number of records requested by a person that the office will deliver in a digital format, unless the requested records are not provided on the web site and 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.

(iii) For purposes of division (B)(7) of this section, "commercial" shall 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.

(8) A public office or person responsible for public records is not required to permit a person who is incarcerated pursuant to a criminal conviction or a juvenile adjudication to inspect or to obtain a copy of any public record concerning a criminal investigation or prosecution or concerning what would be a criminal investigation or prosecution if the subject of the investigation or prosecution were an adult, unless the request to inspect or to obtain a copy of the record is for the purpose of acquiring information that is subject to release as a public record under this section and the judge who imposed the sentence or made the adjudication with respect to the person, or the judge's successor in office, finds that the information sought in the public record is necessary to support



what appears to be a justiciable claim of the person.

(9)(a) Upon written request made and signed by a journalist, a public office, or person responsible for public records, having custody of the records of the agency employing a specified designated public service worker shall disclose to the journalist the address of the actual personal residence of the designated public service worker and, if the designated public service worker's spouse, former spouse, or child is employed by a public office, the name and address of the employer of the designated public service worker's spouse, former spouse, or child. The request shall include the journalist's name and title and the name and address of the journalist's employer and shall state that disclosure of the information sought would be in the public interest.

(b) Division (B)(9)(a) of this section also applies to journalist requests for:

(i) Customer information maintained by a municipally owned or operated public utility, other than social security numbers and any private financial information such as credit reports, payment methods, credit card numbers, and bank account information;

(ii) Information about minors involved in a school vehicle accident as provided in division (A)(1)(gg) of this section, other than personal information as defined in section 149.45 of the Revised Code.

(c) As used in division (B)(9) of this section, "journalist" means a person engaged in, connected with, or employed by any news medium, including a newspaper, magazine, press association, news agency, or wire service, a radio or television station, or a similar medium, for the purpose of gathering, processing, transmitting, compiling, editing, or disseminating information for the general public.

(10) Upon a request made by a victim, victim's attorney, or victim's representative, as that term is used in section 2930.02 of the Revised Code, a public office or person responsible for public records shall transmit a copy of a depiction of the victim as described in division (A)(1)(ii) of this section to the victim, victim's attorney, or victim's representative.

(C)(1) If a person allegedly is aggrieved by the failure of a public office or the person responsible for



public records to promptly prepare a public record and to make it available to the person for inspection in accordance with division (B) of this section or by any other failure of a public office or the person responsible for public records to comply with an obligation in accordance with division (B) of this section, the person allegedly aggrieved may do only one of the following, and not both:

(a) File a complaint with the clerk of the court of claims or the clerk of the court of common pleas under section 2743.75 of the Revised Code;

(b) Commence a mandamus action to obtain a judgment that orders the public office or the person responsible for the public record to comply with division (B) of this section, that awards court costs and reasonable attorney's fees to the person that instituted the mandamus action, and, if applicable, that includes an order fixing statutory damages under division (C)(2) of this section. The mandamus action may be commenced in the court of common pleas of the county in which division (B) of this section allegedly was not complied with, in the supreme court pursuant to its original jurisdiction under Section 2 of Article IV, Ohio Constitution, or in the court of appeals for the appellate district in which division (B) of this section allegedly was not complied with pursuant to its original jurisdiction under Section 3 of Article IV, Ohio Constitution.

(2) If a requester transmits a written request by hand delivery, electronic submission, or certified mail to inspect or receive copies of any public record in a manner that fairly describes the public record or class of public records to the public office or person responsible for the requested public records, except as otherwise provided in this section, the requester shall be entitled to recover the amount of statutory damages set forth in this division if a court determines that the public office or the person responsible for public records failed to comply with an obligation in accordance with division (B) of this section.

The amount of statutory damages shall be fixed at one hundred dollars for each business day during which the public office or person responsible for the requested public records failed to comply with an obligation in accordance with division (B) of this section, beginning with the day on which the requester files a mandamus action to recover statutory damages, up to a maximum of one thousand dollars. The award of statutory damages shall not be construed as a penalty, but as compensation for injury arising from lost use of the requested information. The existence of this injury shall be conclusively presumed. The award of statutory damages shall be in addition to all other remedies



authorized by this section.

The court may reduce an award of statutory damages or not award statutory damages if the court determines both of the following:

(a) That, based on the ordinary application of statutory law and case law as it existed at the time of the conduct or threatened conduct of the public office or person responsible for the requested public records that allegedly constitutes a failure to comply with an obligation in accordance with division (B) of this section and that was the basis of the mandamus action, a well-informed public office or person responsible for the requested public records reasonably would believe that the conduct or threatened conduct of the public office or person responsible for the requested public records did not constitute a failure to comply with an obligation in accordance with division (B) of this section;

(b) That a well-informed public office or person responsible for the requested public records reasonably would believe that the conduct or threatened conduct of the public office or person responsible for the requested public records would serve the public policy that underlies the authority that is asserted as permitting that conduct or threatened conduct.

(3) In a mandamus action filed under division (C)(1) of this section, the following apply:

(a)(i) If the court orders the public office or the person responsible for the public record to comply with division (B) of this section, the court shall determine and award to the relator all court costs, which shall be construed as remedial and not punitive.

(ii) If the court makes a determination described in division (C)(3)(b)(iii) of this section, the court shall determine and award to the relator all court costs, which shall be construed as remedial and not punitive.

(b) If the court renders a judgment that orders the public office or the person responsible for the public record to comply with division (B) of this section or if the court determines any of the following, the court may award reasonable attorney's fees to the relator, subject to division (C)(4) of this section:



(i) The public office or the person responsible for the public records failed to respond affirmatively or negatively to the public records request in accordance with the time allowed under division (B) of this section.

(ii) The public office or the person responsible for the public records promised to permit the relator to inspect or receive copies of the public records requested within a specified period of time but failed to fulfill that promise within that specified period of time.

(iii) The public office or the person responsible for the public records acted in bad faith when the office or person voluntarily made the public records available to the relator for the first time after the relator commenced the mandamus action, but before the court issued any order concluding whether or not the public office or person was required to comply with division (B) of this section. No discovery may be conducted on the issue of the alleged bad faith of the public office or person responsible for the public records. This division shall not be construed as creating a presumption that the public office or the person responsible for the public records acted in bad faith when the office or person voluntarily made the public records available to the relator for the first time after the relator commenced the mandamus action, but before the court issued any order described in this division.

(c) The court shall not award attorney's fees to the relator if the court determines both of the following:

(i) That, based on the ordinary application of statutory law and case law as it existed at the time of the conduct or threatened conduct of the public office or person responsible for the requested public records that allegedly constitutes a failure to comply with an obligation in accordance with division (B) of this section and that was the basis of the mandamus action, a well-informed public office or person responsible for the requested public records reasonably would believe that the conduct or threatened conduct of the public office or person responsible for the requested public records did not constitute a failure to comply with an obligation in accordance with division (B) of this section;

(ii) That a well-informed public office or person responsible for the requested public records reasonably would believe that the conduct or threatened conduct of the public office or person responsible for the requested public records would serve the public policy that underlies the authority that is asserted as permitting that conduct or threatened conduct.



(4) All of the following apply to any award of reasonable attorney's fees awarded under division (C)(3)(b) of this section:

(a) The fees shall be construed as remedial and not punitive.

(b) The fees awarded shall not exceed the total of the reasonable attorney's fees incurred before the public record was made available to the relator and the fees described in division (C)(4)(c) of this section.

(c) Reasonable attorney's fees shall include reasonable fees incurred to produce proof of the reasonableness and amount of the fees and to otherwise litigate entitlement to the fees.

(d) The court may reduce the amount of fees awarded if the court determines that, given the factual circumstances involved with the specific public records request, an alternative means should have been pursued to more effectively and efficiently resolve the dispute that was subject to the mandamus action filed under division (C)(1) of this section.

(5) If the court does not issue a writ of mandamus under division (C) of this section and the court determines at that time that the bringing of the mandamus action was frivolous conduct as defined in division (A) of section 2323.51 of the Revised Code, the court may award to the public office all court costs, expenses, and reasonable attorney's fees, as determined by the court.

(D) Chapter 1347. of the Revised Code does not limit the provisions of this section.

(E)(1) To ensure that all employees of public offices are appropriately educated about a public office's obligations under division (B) of this section, all elected officials or their appropriate designees shall attend training approved by the attorney general as provided in section 109.43 of the Revised Code. A future official may satisfy the requirements of this division by attending the training before taking office, provided that the future official may not send a designee in the future official's place.

(2) All public offices shall adopt a public records policy in compliance with this section for



responding to public records requests. In adopting a public records policy under this division, a public office may obtain guidance from the model public records policy developed and provided to the public office by the attorney general under section 109.43 of the Revised Code. Except as otherwise provided in this section, the policy 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 eight hours.

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

(F)(1) The bureau of motor vehicles may adopt rules pursuant to Chapter 119. of the Revised Code to reasonably limit the number of bulk commercial special extraction requests made by a person for the same records or for updated records during a calendar year. The rules may include provisions for charges to be made for bulk commercial special extraction requests for the actual cost of the bureau, plus special extraction costs, plus ten per cent. The bureau may charge for expenses for redacting information, the release of which is prohibited by law.

(2) As used in division (F)(1) of this section:

(a) "Actual cost" means the cost of depleted supplies, records storage media costs, actual mailing and alternative delivery costs, or other transmitting costs, and any direct equipment operating and maintenance costs, including actual costs paid to private contractors for copying services.



(b) "Bulk commercial special extraction request" means a request for copies of a record for information in a format other than the format already available, or information that cannot be extracted without examination of all items in a records series, class of records, or database by a person who intends to use or forward the copies for surveys, marketing, solicitation, or resale for commercial purposes. "Bulk commercial special extraction request" does not include a request by a person who gives assurance to the bureau that the person making the request does not intend to use or forward the requested copies for surveys, marketing, solicitation, or resale for commercial purposes.

(c) "Commercial" means profit-seeking production, buying, or selling of any good, service, or other product.

(d) "Special extraction costs" means the cost of the time spent by the lowest paid employee competent to perform the task, the actual amount paid to outside private contractors employed by the bureau, or the actual cost incurred to create computer programs to make the special extraction. "Special extraction costs" include any charges paid to a public agency for computer or records services.

(3) For purposes of divisions (F)(1) and (2) of this section, "surveys, marketing, solicitation, or resale for commercial purposes" shall 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.

(G) A request by a defendant, counsel of a defendant, or any agent of a defendant in a criminal action that public records related to that action be made available under this section shall be considered a demand for discovery pursuant to the Criminal Rules, except to the extent that the Criminal Rules plainly indicate a contrary intent. The defendant, counsel of the defendant, or agent of the defendant making a request under this division shall serve a copy of the request on the prosecuting attorney, director of law, or other chief legal officer responsible for prosecuting the action.

(H)(1) Any portion of a body-worn camera or dashboard camera recording described in divisions (A)(17)(b) to (h) of this section may be released by consent of the subject of the recording or a representative of that person, as specified in those divisions, only if either of the following applies:



- (a) The recording will not be used in connection with any probable or pending criminal proceedings;

- (b) The recording has been used in connection with a criminal proceeding that was dismissed or for which a judgment has been entered pursuant to Rule 32 of the Rules of Criminal Procedure, and will not be used again in connection with any probable or pending criminal proceedings.

- (2) If a public office denies a request to release a restricted portion of a body-worn camera or dashboard camera recording, as defined in division (A)(17) of this section, any person may file a mandamus action pursuant to this section or a complaint with the clerk of the court of claims pursuant to section 2743.75 of the Revised Code, requesting the court to order the release of all or portions of the recording. If the court considering the request determines that the filing articulates by clear and convincing evidence that the public interest in the recording substantially outweighs privacy interests and other interests asserted to deny release, the court shall order the public office to release the recording.



Ohio Revised Code Section 2930.01 Definitions.

Effective: April 6, 2023

Legislation: House Bill 343

As used in this chapter, unless otherwise defined in any section in this chapter:

(A) "Criminal offense" means an alleged act or omission committed by a person that is punishable by incarceration and is not eligible to be disposed of by the traffic violations bureau.

(B) "Custodial agency" means one of the following:

(1) The entity that has custody of a defendant or an alleged juvenile offender who is incarcerated for a criminal offense, is under detention for the commission of a delinquent act, or who is detained after a finding of incompetence to stand trial or not guilty by reason of insanity relative to a criminal offense, including any of the following:

(a) The department of rehabilitation and correction or the adult parole authority;

(b) A county sheriff;

(c) The entity that administers a jail, as defined in section 2929.01 of the Revised Code;

(d) The entity that administers a community-based correctional facility and program or a district community-based correctional facility and program;

(e) The department of mental health and addiction services or other entity to which a defendant found incompetent to stand trial or not guilty by reason of insanity is committed.

(2) The entity that has custody of an alleged juvenile offender pursuant to an order of disposition of a juvenile court, including the department of youth services or a school, camp, institution, or other facility operated for the care of delinquent children.



(C) "Defendant" means a person who is alleged to be the perpetrator of a criminal offense in a complaint, indictment, or information that charges the commission of a criminal offense and that provides the basis for the criminal prosecution and subsequent proceedings to which this chapter makes reference.

(D) "Member of the victim's family" means a spouse, child, stepchild, sibling, parent, stepparent, grandparent, or other relative of a victim but does not include a person who is charged with, convicted of, or adjudicated to be a delinquent child for the criminal offense or delinquent act against the victim or another criminal offense or delinquent act arising from the same conduct, criminal episode, or plan.

(E) "Prosecutor" means one of the following:

(1) With respect to a criminal case, it has the same meaning as in section 2935.01 of the Revised Code and also includes the attorney general and, when appropriate, the employees of any person listed in section 2935.01 of the Revised Code or of the attorney general.

(2) With respect to a delinquency proceeding, it includes any person listed in division (C) of section 2935.01 of the Revised Code or an employee of a person listed in that division who prosecutes a delinquency proceeding.

(F) "Public agency" means an office, agency, department, bureau, or other governmental entity of the state or of a political subdivision of the state.

(G) "Public official" has the same meaning as in section 2921.01 of the Revised Code.

(H) "Victim" has the same meaning as in Section 10a of Article I of the Ohio Constitution.

(I) "Victim's representative" means a member of the victim's family or another person who pursuant to the authority of section 2930.02 of the Revised Code exercises the rights of a victim under this chapter.

(J) "Court" means a court of common pleas, juvenile court, municipal court, or county court.



(K) "Delinquency proceeding" means all proceedings in a juvenile court that are related to a case in which a complaint has been filed alleging that a child is a delinquent child.

(L) "Case" means a delinquency proceeding and all related activity or a criminal prosecution and all related activity.

(M) The "defense" means the defense against criminal charges in a criminal prosecution or the defense against a delinquent child complaint in a delinquency proceeding.

(N) The "prosecution" means the prosecution of criminal charges in a criminal prosecution or the prosecution of a delinquent child complaint in a delinquency proceeding.

(O) "Delinquent act" means an alleged act committed by a child, regardless of whether the child is competent, that does any of the following and is not disposed of by the juvenile traffic violations bureau serving the court under Traffic Rule 13.1 or is not a minor misdemeanor juvenile traffic offense:

(1) Violates any law of this state or the United States, or any ordinance of a political subdivision of the state, that would be an offense if committed by an adult;

(2) Violates any lawful order of the court made under this chapter, including a child who violates a court order regarding the child's prior adjudication as an unruly child for being an habitual truant;

(3) Violates any lawful order of the court made under Chapter 2151. of the Revised Code other than an order issued under section 2151.87 of the Revised Code;

(4) Violates division (C) of section 2907.39, division (A) of section 2923.211, or division (C)(1) or (D) of section 2925.55 of the Revised Code.

(P)(1) "Alleged juvenile offender" means a child who is alleged to have committed a delinquent act in a police report or in a complaint in juvenile court that charges the commission of a delinquent act and that provides the basis for the delinquency proceeding and all subsequent proceedings to which



this chapter makes reference.

(2) As used in divisions (O) and (P)(1) of this section, "child" has the same meaning as in section 2151.011 of the Revised Code.

(Q) "Motor vehicle accident" means any accident involving a motor vehicle.

(R) "Motor vehicle" has the same meaning as in section 4509.01 of the Revised Code.

(S) "Aircraft" has the same meaning as in section 4561.01 of the Revised Code.

(T) "Aquatic device" means any vessel, or any water skis, aquaplane, or similar device.

(U) "Vehicle," "streetcar," and "trackless trolley" have the same meanings as in section 4511.01 of the Revised Code.

(V) "Vehicle, streetcar, trackless trolley, aquatic device, or aircraft accident" means any accident involving a vehicle, streetcar, trackless trolley, aquatic device, or aircraft.

(W) "Vessel" has the same meaning as in section 1546.01 of the Revised Code.

(X) "Victim advocate" means a person employed or authorized by a public or private entity who provides support and assistance for a victim of a criminal offense or delinquent act in relation to criminal, civil, administrative, and delinquency cases or proceedings and recovery efforts related to the criminal offense or delinquent act.

(Y) "Victim's attorney" means an attorney retained by the victim for the purpose of asserting the victim's constitutional and statutory rights.

(Z) "Prosecutor's designee" means any person or entity designated by the prosecuting attorney but does not include a court or court employee.

(AA) "Suspect" means a person who is alleged to be the perpetrator of a criminal offense.



Ohio Revised Code

Section 2930.07 Privacy of victim's information.

Effective: July 7, 2023

Legislation: Senate Bill 16

(A) As used in this section:

(1)(a) "Case document" means a document or information in a document, or audio or video recording of a victim of violating a protection order, an offense of violence, or a sexually oriented offense, regarding a case that is submitted to a court, a law enforcement agency or officer, or a prosecutor or filed with a clerk of court, including, but not limited to, pleadings, motions, exhibits, transcripts, orders, and judgments, or any documentation, including audio or video recordings of a victim of violating a protection order, an offense of violence, or a sexually oriented offense, prepared or created by a court, clerk of court, or law enforcement agency or officer, or a prosecutor regarding a case.

(b) "Case document" does not include materials subject to the work product doctrine, materials that by law are subject to privilege or confidentiality, or materials that are otherwise protected or prohibited from disclosure by state or federal law. "Case document" also does not include motor vehicle accident reports submitted to the department of public safety pursuant to section 5502.11 of the Revised Code unless the victim or victim's representative requests redaction pursuant to division (B)(1)(p) of section 2930.04 of the Revised Code.

(2) "Court" has the same meaning as in section 2930.01 of the Revised Code and includes a court of appeals and the supreme court.

(3) "Minor victim" means any person who was under eighteen years of age at the time of the commission of the criminal offense or delinquent act of which the person is a victim.

(4) "Public office" and "public official" have the same meanings as in section 149.011 of the Revised Code.

(5) "Sexually oriented offense" has the same meaning as in section 2950.01 of the Revised Code.



(B) The victim and victim's representative, if applicable, have the right at any court proceeding, including any juvenile court proceeding, not to testify regarding the victim's address, telephone number, place of employment, or other locating information unless the victim specifically consents or the court determines that the fundamental demands of due process of law in the fair administration of criminal justice prevails over the victim's rights to keep the information confidential.

The court shall make this determination pursuant to an in-camera review. If the court determines that the information shall be disclosed, the court proceeding shall be closed during the disclosure.

(C) Any public office or public official that is charged with the responsibility of knowing the name, address, or other identifying information of a victim or victim's representative as part of the office's or official's duties shall have full and complete access to the name, address, or other identifying information of the victim or victim's representative. That public office or public official shall take measures to prevent the public disclosure of the name, address, or other identifying information of the victim or victim's representative through the use of redaction as set forth in division (D) of this section. Nothing in this section prevents a public agency from maintaining unredacted records of a victim's or victim's representative's name, contact information, and identifying information for its own records and use or a public office or public official from allowing another public office or public official to access or obtain copies of its unredacted records. The release of unredacted records to a public office or official does not constitute a waiver of any exemption or exception pursuant to section 149.43 of the Revised Code. This section prohibits the public release of unredacted case documents pursuant to division (A)(1)(v) of section 149.43 of the Revised Code and division (D) of this section.

(D)(1)(a)(i) On written request of the victim or victim's representative to a law enforcement agency, prosecutor's office, or court, all case documents related to the cases or matters specified by the victim maintained by the entity to whom the victim or victim's representative submitted the request shall be redacted prior to public release pursuant to section 149.43 of the Revised Code to remove the name, address, or other identifying information of the victim.

(ii) If the victim of violating a protection order, an offense of violence, or a sexually oriented offense, or the victim's representative, was unable to complete the form at the time of first contact



with law enforcement pursuant to section 2930.04 of the Revised Code, until the victim's initial interaction with a prosecutor, all case documents related to the cases or matters currently before the court regarding that offense shall be redacted prior to public release pursuant to section 149.43 of the Revised Code to remove the name, address, or other identifying information of the victim.

(b) If the victim or victim's representative uses the victims' rights request form to request redaction, that redaction request applies only to the case or cases to which the form pertains. If the victim requests redaction using some other manner than the victims' rights request form, that written request shall specify the cases or matters to which the request applies.

(2) On written request of a victim or victim's representative to the department of public safety, through the contact information provided under division (B)(1)(p) of section 2930.04 of the Revised Code, a report submitted pursuant to section 5502.11 of the Revised Code as maintained by the department of public safety shall be redacted prior to public release as a public record under section 149.43 of the Revised Code to remove the name, address, or other identifying information of the victim.

(3) If multiple victims are involved in a single case, the public office or official shall take reasonable precautions to protect the information of the victims from other victims, unless all of the victims consent to the release of information.

(E)(1)(a) Once a case is closed or inactive, a victim or victim's attorney, if applicable, may view the recorded forensic interview of a minor victim or developmentally disabled victim upon request. The victim or victim's attorney shall be permitted to view the unredacted forensic interview at the location of the child advocacy center or other agency responsible for the forensic interview. An employee or designee of the child advocacy center or agency shall be present at all times during the victim's or victim's attorney's viewing of the interview. The victim or victim's attorney shall not be permitted to record, copy, photograph, or remove from the location the forensic interview or any materials summarizing, documenting, transcribing, or otherwise associated with the forensic interview. The release of an unredacted copy of any recorded forensic interview to a victim, victim's attorney, or victim's representative pursuant to this division is not a violation of section 2151.421 of the Revised Code.



(b) Once a case is closed or inactive, on written application under seal to the court of common pleas in the county in which the forensic interview was recorded, a victim, victim's attorney, if applicable, or victim's representative may request an unredacted copy of any recorded forensic interview of a minor victim or developmentally disabled victim.

(2) Upon receiving the application, the court shall notify the child advocacy center or other agency responsible for the forensic interview and shall provide the child advocacy center or other agency an opportunity to respond or object to the application. While the application is pending, the child advocacy center or other agency responsible for the forensic interview shall not make available for inspection or otherwise disclose the forensic interview or associated materials to the applicant or any person or entity acting on behalf of the applicant.

(3) The forensic interview shall be made available to the court for an in-camera review.

(4) The court may grant the application only upon an express finding that allowing the applicant to receive an unredacted copy of the forensic interview is in the interest of the victim under the totality of the circumstances.

(F) This section does not apply to any disclosure of the name, address, or other identifying information of a victim that is required to be made in the statewide emergency alert program under section 5502.52 of the Revised Code, missing person alert system, or other similar alert system.

(2) This section does not apply to any disclosure of the name, address, or other identifying information of a victim of a criminal offense or delinquent act that resulted in the death of the victim.

(3) Nothing in this section shall prevent a victim, a victim's representative, or a victim's attorney from receiving a copy of any case document with the victim's name, contact information, and identifying information unredacted. A public office's or official's provision of a copy of a case document with the victim's name, contact information, and identifying information unredacted to a victim, victim's representative, or victim's attorney, if applicable, does not constitute a waiver of any exemption or exception under section 149.43 of the Revised Code.

(4) Nothing in this section shall affect either of the following:



- (a) Any rights of a victim or victim's representative to be provided with notice or to make any written or oral statement under this chapter or other applicable law;
- (b) The disclosure of the location where the reported criminal offense or delinquent act occurred.
- (5) Nothing in this section prohibits the defendant from including necessary information about the victim in filings with the trial court, court of appeals, or the supreme court. The victim's name and identifying information in the filings is not a public record under section 149.43 of the Revised Code if the victim has requested that the victim's name and identifying information be redacted from public records.
- (6) Nothing in this section prevents a law enforcement agency or prosecutor from providing a victim's preferred contact information to a designated agency that provides victim services and rights notification, and any release of documents or information to a law enforcement officer or public official's designee does not constitute a waiver of a victim's right to redaction under this section.