



## Public Records Policy and Procedures

“Ohio has one of the most broad public information laws in the country—and that’s as it should be. Because an important part of earning the people’s trust is letting the people see what we’re doing. I believe in it as a policy, and I believe in it as a practice.”

Ted Strickland, Governor

“I concur completely in the Governor’s view of transparency in Government—the Public Records Policy of the Department of Agriculture, as set forth below, is intended as a reflection of that belief.”

Robert J. Boggs, Director of Agriculture

- I. Public Records Defined.** The Ohio Department of Agriculture (ODA), in accordance with the Public Records Act (Section 149.43 of the Ohio Revised Code), defines a “public record” as including the following:

Any item (1) that is stored on a fixed medium (i.e., paper, computer, film); (2) that is created, received, or by a public office; and (3) that documents the organization, functions, policies, decisions, procedures, operations or other activities of the Department.

The determination of whether a particular item is a public record focuses on the use and substance of the document or record, not on form of the document or record, or where and how it was created.

- A. E-mail as Public Record.** Documents in electronic mail format are records as defined by the Public Records Act when their content relates to the business of the office, or are used to conduct public business. E-mail is to be treated in the same fashion as records in other formats and should follow the same retention schedules.

- 1. Private E-mails May Constitute a Public Record.** The Department discourages the use of private e-mail accounts to conduct public business. Any correspondence and/or documents created with or in private e-mail accounts which are used to conduct public business are

public records and subject to disclosure. The Department's employees are instructed to retain any private-account e-mails that relate to public business and to copy them to their State e-mail accounts and/or to the Department's records custodian.

- a) **Retention of Certain Private E-mails.** The records custodian is to treat e-mails from private accounts used for public business as records of the public office, filing them in the appropriate way, retaining them per established schedules and making them available for inspection and copying in accordance with the Public Records Act.

**II. Public Records Maintenance and Organization.** The Department shall organize and maintain all public records in a manner that serves both the administrative needs of the office, as well as the public's interest in the availability of those records for inspection and copying.

- A. **Record Retention Schedule to be Posted.** The Department's record retention schedules are to be updated regularly and posted prominently at the Department of Administrative Services (DAS) website:  
<http://das.ohio.gov/gsd/printing/records/index.html>.

**III. Records Request.** Each request for public records should be evaluated for a response using the following guidelines:

- A. **Identification of Requested Record.** Although the Public Records Act does not require that specific language is required to make a public records request, the requester must identify the records requested with sufficient clarity to allow the public office to identify, retrieve, and review the records. If a request is received by the Department, and it is not clear what records are being sought, the records custodian will contact the requester for clarification, and assist the requester in revising the request by informing the requester of the manner in which the office maintains its records.
- B. **Form of Request.** Requesters are encouraged to make any and all public records requests to the Department in written form. While the requester does not have to put a records request in writing, a written request enables the Governor's Office to identify responsive records with greater speed and accuracy, and to maintain a record of request and response.
  - 1. **Identification of Requester and Intended Use of Records.** A requester does not have to provide his or her identity or the intended

use of the requested public record. It is the Department's general policy that this information is not to be requested.

- 2. Public Record Request Log.** All public record requests shall be entered into a log to record the following: name (if provided) and address (mail or e-mail) of requester; date request received; records requested; redactions and/or exemptions asserted (if any); and date of response.
- C. Availability of Records.** Public records are to be available for inspection during regular business hours, with the exception of published holidays. Public records must be made available for inspection promptly. Copies of public records must be made available within a reasonable period of time. "Prompt" and "reasonable" take into account the volume of records requested; the form of the requested records; the proximity of the location where the records are stored; and the necessity for any legal review of the records requested.
- D. Response Time.** Upon receipt by the Department, each public records request should be evaluated for an estimated length of time required to gather the records. Fifteen days is a maximum – quicker is better.

  - 1. Fulfillment or Acknowledgment of Request within 15 Days.** All requests for public records must either be fulfilled or acknowledged in writing by the Department within fifteen (15) business days following receipt of the request.

    - a) Routine Requests.** Routine requests for records should be satisfied as soon as is reasonably possible to do so. Routine requests include, but are not limited to, press releases, meeting minutes (both in draft and final form), budgets, salary information, forms and applications, personnel rosters, etc. If a limited number of pages of copies are requested or if the records are readily available in an electronic format that can be e-mailed or downloaded easily, these should be made as quickly as is reasonably possible. If more copies are requested, an appointment should be made with the requester on when the copies or computer files can be delivered.
    - b) Non-Routine Requests.** If a request is deemed significantly beyond "routine," such as seeking a voluminous number of copies or requiring extensive research, the acknowledgement must include the following:

- (1) An estimated number of business days it will take to satisfy the request.
  - (2) An estimated cost to be borne by the requester if the request is fulfilled.
  - (3) Identification of the type of items within the responsive records that may be exempt from disclosure and/or subject to redaction.
- c) **Legal Review of All Requests.** The Department has an affirmative duty to review any and all records deemed responsive to a public records request. This legal review is required to prevent disclosure of personal information protected by state and federal privacy laws (i.e., Social Security, account numbers and medical information), and certain confidential records which must not be disclosed under penalty of law (i.e., certain investigatory, criminal and education records). Additionally, documents must undergo a legal review to identify material protected by attorney-client and executive privilege, as well as to redact critical security and infrastructure records.

## **E. Calculation of Costs for Public Records.**

1. **Actual Costs.** Those seeking public records will be charged only the actual cost of making copies, including charges for the following:
  - a) The charge for paper copies is 5 cents (\$.05) per page. Two-sided photocopies shall be charged at the rate of 10 cents (\$.10) per page. There will be no charge for requests of 100 pages or less.
  - b) The charge for downloaded computer files to a compact disc is 1 dollar (\$1.00) per disc.
  - c) There is no charge for documents e-mailed, except where third party software and/or services is required to e-mail large electronic files.
  - d) Requesters may ask that documents be mailed to them. They will be charged the actual cost of the postage and mailing supplies.

2. **Pre-payment of costs.** Advance payment is required for all actual costs which are anticipated to exceed Twenty-Five Dollars (\$25.00).
3. **Waiver of Costs.** The Department may choose to waive any and all costs associated with compliance with a public records request. Any waiver of costs should not be construed to waive, and does not in fact waive, any right to the future assertion of the Department to request and collect actual costs of compliance with a public records request.

**F. Denial of Public Records Request.** Any denial of public records requested must include an explanation, including legal authority. If portions of a record are public and portions are exempt, the exempt portions are to be redacted and the remainder released. If there are redactions, each redaction must be accompanied by a supporting explanation, including legal authority.

1. **Waiver of Exemption.** The Department may choose to waive any and all available assertions of privilege or exemption when providing responsive materials to a public records request. Waiver of any privilege and/or exemption should not be construed to waive, and does not in fact waive, any right to the future assertion of privilege and/or exemption.

**IV. Failure to Respond to a Public Records Request.** The Department recognizes the legal and non-legal consequences of failure to properly respond to a public records request. In addition to the distrust in government that failure to comply may cause, the Department's failure to comply with a request could result in a court ordering the Department to comply with the law and to pay the requester attorney's fees and damages.