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MID-OHIO EDUCATIONAL SERVICE CENTER
RELENTLESS ACCOUNTABILITY ADMINISTRATIVE CONFERENCE

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"Public Records in the Digital Age"

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I. Introduction

II. What is a "Record?"

A. Pursuant to R.C. 149.011(G), a "record" is any document, device, or item, regardless of physical form or characteristic, including an electronic record:

1. That is created or received by or coming under the jurisdiction of any public office of the state or its political subdivisions; and

2. Which serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office.

B. "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means. R.C. 1306.01(G).

III. What is a "Public Record?"

A. A "public record" is a record kept by a public office. R.C. 149.43(A)(1).

B. Records that do not yet exist – *e.g.*, the minutes of a school board meeting that has not occurred are not records, and therefore, are not public records.

C. Records that are not in the possession or control of the public office are not public records. If a candidate for the office of superintendent supplies application materials to a governing authority and the governing authority returns the materials to the candidate, they are not public records. State ex rel. Cincinnati Enquirer, Division of Gannett Satellite Information Network, Inc. v. Cincinnati Board of Education, 99 Ohio St.3d 6, 2003-Ohio-2260.

D. Records that have been properly disposed of are not public records. State ex rel. Toledo Blade Co. v. Seneca Cty. Bd. of Commrs., 2008-Ohio-6253, ¶23.

IV. Exempt Records

A. Specific exemptions under Public Records Act.

1. Medical records. R.C. 149.43(A)(1)(a).

   Records that (a) pertain to an individual's medical history, diagnosis, prognosis, or medical condition *and* (b) were generated and maintained in the process of medical treatment are not subject to disclosure. The Americans with Disabilities Act ("ADA") prohibits the disclosure as a public record of information regarding the medical condition or history of employees. 29 C.F.R. 1630.14.

2. Trial preparation records. R.C. 149.43(A)(1)(g).

   Contain information that was specifically compiled in reasonable anticipation of, or in defense of a criminal or civil action or proceeding.

3. Security records. R.C. 149.45.

   Defined as "any record that contains information directly used for protecting or maintaining the security of a public office against attack, interference, or sabotage, or to prevent, mitigate, or respond to acts of terrorism."

4. Infrastructure records. R.C. 149.45.

   Defined as a record that discloses the configuration of certain systems, such as security codes, communications, computer, electrical, mechanical, ventilation, water, plumbing, or structural systems. This excludes simple floor plans.

5. Adoption records. R.C. 149.43(A)(1)(d).

6. Probation and parole records. R.C. 149.43(A)(1)(b).

7. "Records the release of which is prohibited by state or federal law." R.C. 149.43(A)(1)(v).

B. Other records/information prohibited from disclosure by state or federal law.

1. Student education records (Family Educational Rights & Privacy Act ("FERPA")).

a. Education records that are not identified by the school district as directory information.

Each state defines the types of information that the school must maintain about students and the formats in which that information must be recorded or kept. All of this information is an "education record" for purposes of FERPA.

b. Personally identifiable information.

Personally identifiable information is information about a student contained in his or her education records that cannot be disclosed without consideration of the requirements of FERPA. Personally identifiable information includes, but is not limited to:

(1) The student's name;

(2) The name of a student's parent or other family member;

(3) The address of the student or student's family;

(4) A personal identifier, such as the student's social security number; and

(5) A list of personal characteristics that would make the student's identity easily traceable.

c. Directory information may be released if notice is provided. Directory information means information contained in an education record of a current student that would not generally be considered harmful or an invasion of privacy if disclosed. It includes, but is not limited to the following:

(1) Name;

(2) Address;

(3) Telephone number;

(4) Date and place of birth;

(5) Major field of study;

(6) Participation in officially recognized activities and sports;

(7) Weight and height of members of athletic teams;

(8) Dates of attendance;

(9) Degrees and awards received;

(10) E-mail address;

(11) Most recent school attended by the student; and

(12) Photographs.

2. Social security numbers. State ex rel. Beacon Journal Publ. Co. v. City of Akron, 70 Ohio St.3d 605 (1994).

3. Criminal background check information. R.C. 3319.39(D).

4. Individual STRS and SERS information.

a. The individual's personal records as set forth in R.C. 3307.20.

b. The individual's personal history records:

(1) Address.

(2) Telephone number.

(3) Social Security number.

(4) Record of contributions.

(5) Correspondence on the system.

(6) Other information STRS or SERS determines to be confidential.

c. Any information identifying, by name and address, the amount of a monthly allowance or benefit paid to the individual.

5. School Safety Plan. R.C. 3313.536.

6. Audit Report, until a certified copy is filed with the School Treasurer. R.C. 117.06.

7. Trade secrets, including semester examinations. State ex rel. Perrea v. Cincinnati Public Schools, 123 Ohio St.3d 410 (2009); R.C. §1333.61.

8. Records falling within attorney-client privilege. R.C. 2317.02(A)(1).

9. Counseling records. R.C. 2317.02(G)(1).

V. Public Records Policy

Policy requirement. R.C. 149.43(E)(2).

A. All public offices must adopt a public records policy for responding to public records requests in compliance with the Public Records Law.

B. The policy may *not* do the following:

1. Limit the number of public records that the public office will make available to a single person.

2. Limit the number of public records that the public office will make available during a fixed period of time.

2. Establish a fixed period of time before the public office will respond to a request for inspection or copying of public records, unless the period is less than eight hours.

C. The policy must be distributed to the public office's records custodian, who must acknowledge receipt of the policy.

D. The policy must be included in any employee manual or handbook.

E. A poster describing the policy must be created and posted in a conspicuous place.

F. A copy of the public office's records retention schedule must be maintained at a location readily available to the public.

VI. Are District Social Media Posts Public Records?

A. "Social media" – defined as "forms of electronic communication through which users create online communities to share information, ideas, personal messages, and other content." (Merriam-Webster 2021).

B. It is the message or ***content***, not the medium on which it exists, that makes a document a "record" of a public office.

If the content of the social media post "was both (1) created or received by and (2) documents the office's business activities, the posted information may well be a record." *Ohio Electronic Records Committee* "Social Media: The Records Management Challenge" Guidance ("OERC Guidance"), http://ohioerc.org/wp-content/uploads/2014/09/OhioERC-Guideline-Social-Media1.pdf

1. The analysis to determine record or non-record is necessarily fact specific.

2. Because most statements that school district officials post on the district's Twitter, Facebook, or other social media account are related to, or "document," the activities of the district, most of the district's tweets and posts would qualify as records of the district.

3. Comments from the public that are received on the school district's Twitter account, Facebook page, or other social media account may constitute records of the district, depending upon the content.

C. Even statements that a school district official posts on his or her "personal" account may qualify as a record of the district, depending upon the content.

1. State ex rel. McCaffrey v. Mahoning Cty. Prosecutor's Office, 2012-Ohio-4246. McCaffrey made a public-records request for "all calendars" of three assistant county prosecutors during a specific two-year time span. The Prosecutor's Office denied this request, citing a Tenth Circuit Court of Appeals decision which held that the "personal" calendar of a public official was not a public record subject to disclosure absent evidence that the calendar documented any official purpose. Upon review of the evidence, the Supreme Court of Ohio found that the three prosecutors made work-related entries on what the Prosecutor's Office considered their "personal" calendars. The Court held that these entries "serve to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office," and are considered public-records, subjecting those work-related entries on the "personal" calendars to disclosure under R.C. 149.011(G) and 149.43.

2. In Knight First Amendment Institute at Columbia Univ. v. Trump, 928 F.3d 226 (2nd Cir. 2019), the Second Circuit considered former President

Trump's Twitter account, which was used for *official* purposes. The account was described as an official account and was used to announce, describe, and defend policies; to promote legislative agenda; to announce official decisions; and to engage with foreign leaders, among other things. The National Archives deemed the tweets "official" for purposes of archiving them. As the Court explained, "the evidence of the official nature of the Account is overwhelming." However, the Court was careful to note that "not every social media account operated by a public official is a government account."

VII. Can the District Delete Negative Comments From its Social Media Pages?

A. Generally, if a comment or post qualifies as a "record," then it must be maintained in accordance with the school district's records retention schedule.

B. However, a school district is not obligated to retain a comment or post if it is merely a "secondary copy." (OERC Guidance, p. 3.)

If the information or social media content is duplicated and kept elsewhere (e.g., press release, meeting minutes), then the social media version is a "secondary copy" and does not need to be retained in accordance with the records retention schedule.

C. Thus, a school district may remove inappropriate, prohibited comments from its Facebook page or other social media site if the comments:

1. Do not serve to document the organization, functions, policies, decisions, procedures, operations, or other activities of the school district; or

2. The school district retains a copy of the comments elsewhere for its records.

D. However, be aware of potential issues with deleting negative comments which are public records and are not retained elsewhere.

1 The First Amendment protects citizens' free speech from censorship by the school district. If social media sites encourage participation, they are "limited public forums" (designated public forums). Speech placed within that forum may be granted First Amendment protections.

a. In Knight First Amendment Institute at Columbia Univ. v. Trump, 928 F.3d 226 (2nd Cir. 2019), an organization and individual Twitter users brought action against President Trump and other officials challenging his actions in barring individual users from the President's Twitter account.

The Second Circuit held that the portion of the @realDonaldTrump account – the "interactive space" where Twitter users may directly engage with the content of the President's tweets – is a limited (designated) public forum. Regulation of a designated public forum is permissible only if it is narrowly drawn to achieve a compelling state interest. And viewpoint discrimination is presumed impermissible when directed against speech otherwise within the forum's limitations. Here, President Trump blocked individual users as a result of viewpoint discrimination. Thus, the Court held that blocking of the individual plaintiffs as a result of their expressed political views violated the First Amendment.

b. Davison v. Randall, 912 F.3d 666 (4th Cir. 2019) – Phyllis Randall, the chair of a county board of supervisors in Virginia, created the "Chair Phyllis J. Randall" page on Facebook. She designated the page as a "governmental official" page and she and her chief of staff shared administrative control of the page. Randall indicated the page was her "county Facebook page," utilizing it notify the public about a variety of subjects related to her official responsibilities. Randall also publicized her Facebook page in her official newsletter, which was prepared by county employees.

A member of the public, Brian Davison, posted a comment on the page that accused school board members of acting unethically. Randall later deleted her original post, Davison's comment, as well as any other comments or replies. She then banned Davison from the Facebook page, preventing him from making any further comments on her page (she changed her mind a little later and "unbanned" Davison).

Davison filed suit alleging that his First Amendment Rights were violated. The Fourth Circuit ruled in favor of Davison and held that Randall's Facebook page was a "public forum." The court recognized that it was establishing a precedent by finding that Randall's Facebook page was a "public forum:" "although neither the Supreme Court nor any Circuit has squarely addressed whether a governmental social media page – like the Chair's Facebook Page – constitutes a public forum, aspects of the Chair's Facebook Page bear the hallmarks of a public forum." The Court noted that Randall intentionally opened the public comment section of her page to public discussion by inviting anyone to post about any issues, including compliments and criticism, and that she had not restricted the public's access to the page or the comments section of the page. The Court further stated that Randall's ban of

Davison also met the definition of "viewpoint discrimination" because she banned him in response to his comments alleging corruption and conflicts of interests among the school board.

c. In 2017, the ACLU of Maryland and four state residents sued Governor Hogan, alleging he violated the law by censoring people who disagreed with him by blocking them from posting their opinions or by deleting critical comments. In April of 2018 the parties settled for $65,000. As part of settlement, Gov. Hogan was to keep his official Facebook page open to critical viewpoints. The settlement also includes a new social media policy that will govern Gov. Hogan's Facebook page, mandates the creation of a second Facebook page dedicated to providing a public forum where constituents can raise a host of issues for the governor's attention, and creates an appeals process for constituents who feel their comments have been improperly deleted, or that they have been wrongfully blocked.

d. In Hawaii Defense Found. v. City & Cty. of Honolulu, 2014 WL 2804448, *1 (D. Hawaii, June 19, 2014), Plaintiffs claimed the City and County of Honolulu violated their First Amendment rights when their posts to the Honolulu Police Department's ("HPD") Facebook page were removed and they were blocked from making further posts. After settlement negotiations, Defendants agreed to develop a policy governing public posting, restored Plaintiffs' deleted posts, permitted Plaintiffs to post to the page, and agreed not to ban people or remove posts based on political content. The HPD also paid the Plaintiffs a total of $31,000 for deleting negative Facebook comments.

e. In Karras v. Gore, 2015 WL 74143, *1 (S.D. California, Jan. 6, 2015), a citizen sued the Sheriff's Department after it deleted his Facebook comments and banned him from further postings on their page. He claimed it was a violation of his First Amendment rights because the Facebook page was run by a government entity and, therefore, a public forum for all taxpayers. The county ultimately settled the dispute for a total of $23,020, but admitted no wrong-doing in the settlement.

f. In Quick et al v. City of Beech Grove, No. 1:16-cv-01709 (S.D. Ind., Jun. 29, 2016), Plaintiffs, two Beech Grove women, were members of Beech Grove Crime Watch and posted comments related to crime awareness and prevention on Facebook pages for the City of Beech Grove and the Beech Grove Police Department. On multiple occasions, their posts and other Facebook users' posts had been removed from these Facebook pages with no explanation.

After repeatedly blocking their posts, the City of Beech Grove blocked them from posting any future comments. The posts, which sometimes posed questions to the police department, may have been perceived as critical of the city and police. In fact, the removed posts posed valid questions about the city's crime reporting and police action and inaction related to the removal of political yard signs. Yet the city maintained a policy and practice of censoring Facebook comments based on the viewpoint of the user. In fact, the city has stated, "If you decide to make unpleasant comments, we will delete you." The ACLU of Indiana filed a lawsuit on behalf of the two women, saying the city's actions violated the First Amendment. The parties ultimately settled for an undisclosed amount.

2. Legally removing postings from a "limited public forum."

   a. Reasonable and Content Neutral Decisions – to remove posts, school districts must ensure their decisions are reasonable and content neutral. In other words, the content or viewpoint of the speech cannot factor into the decision. The district cannot remove posts or ban users because it does not like the negative or critical comments.

   b. Non-protected Speech – there are instances where the speech itself will not be protected by the First Amendment. For example, obscenity, threats, incitement, and fighting words.

3. Tip: maintain a record of removed posts. The post can be reviewed later if issues arise.

VIII. Can the District Post THAT on Social Media?

A. Student awards, pictures, and/or videos.

1. The Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. §1232g, was enacted in 1974 to address public concern over the disclosure of student education records and the right of a parent to examine the student's education record.

2. Under FERPA, no federal funds shall be made available to any school district that has a policy or practice of releasing student education records (or personally identifiable information contained therein other than directory information) without first obtaining parental consent.

3. Meaning of "education record."

a. The term "education record" is defined by the federal statute as those records, files, documents, and other materials which:

(1) Contain information related directly to a student; and

(2) Are maintained by an educational agency or institution, or by a person acting for such an agency or institution.

b. An education record is a very broad concept and includes, but is not limited to:

(1) Any demographic/personal information about a student;

(2) Class assignment;

(3) Record of attendance;

(4) Grades;

(5) Standardized test scores; or

(6) Some anecdotal records about a student, such as narrative descriptions that do not fall within the sole possession exception.

4. Meaning of "personally identifiable information."

"Personally identifiable information" is information about a student contained in his or her education records that cannot be disclosed without consideration of the requirements of FERPA. It can be any information, such as a grade in a class, but it does not have to be what one would ordinarily think of as "private information." Under the definition in 34 C.F.R. §99.3, personally identifiable information includes, but is not limited to:

a. The student's name;

b. The name of a student's parent or other family member;

c. The address of the student or student's family;

d. A personal identifier, such as the student's social security number or student number;

e. Other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name;

f. Other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; and

g. Information requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates.

5. What constitutes disclosure for purposes of FERPA?

The concept of disclosure under FERPA is extremely broad. It includes everything from copying education records for a local newspaper to discussing a student's personally identifiable information at lunch. 34 C.F.R. §99.3 defines disclosure as meaning, "to permit access to or the release, transfer, or other communication of personally identifiable information contained in the education records to any party, by any means, including oral, written, or electronic means."

6. In light of the foregoing, a school district should refrain from posting any student awards, pictures, videos, and/or any other student information that could arguably constitute an education record or personally identifiable information, unless and until the district has done one or both of the following:

a. Obtained prior written parental consent to disclose the information; and/or

b. Properly designated the information as "directory information."

7. Obtaining parental consent.

The parental consent must be signed and dated, and must:

a. Specify the records that may be disclosed;

b. State the purpose of the disclosure; and

c. Identify the party or class of parties to whom the disclosure may be made.

8. Designating directory information.

a. Directory information is defined as "information contained in an education record of a current student that would not generally be considered harmful or an invasion of privacy if disclosed[,]" such as a student's:

(1) Name;

(2) Address;

(3) Telephone number;

(4) Date and place of birth;

(5) Major field of study;

(6) Participation in officially recognized activities and sports;

(7) Weight and height of members of athletic teams;

(8) Dates of attendance;

(9) Degrees, honors, and awards received;

(10) E-mail address;

(11) Most recent educational agency attended by the student; and

(12) Photographs.

b. Disclosure of directory information may be made if a school district has given public notice to parents of students in attendance of:

(1) The types of personally identifiable information that the district has designated as directory information;

(2) A parent's or eligible student's right to refuse to let the district designate any or all of those types of information about the student as directory information; and

(3) The period of time within which a parent or eligible student has to notify the district in writing that they do not want any or all of those types of information about the student designated as directory information.

B. Health-related alerts: a student's peanut allergy; a teacher's maternity leave; etc.

1. A school district should refrain from posting individual health information on its social media page.

2. The disclosure of a student's individual health information may violate FERPA.

3. The disclosure of an employee's individual health information may violate:

a. The Health Insurance Portability and Accountability Act ("HIPAA") (Note: The HIPAA privacy rule is applicable to a school district only under limited circumstances, as a school district typically does not meet the definition of a "covered entity" that is governed by the rule.);

b. The Americans with Disabilities Act ("ADA");

c. The Family and Medical Leave Act ("FMLA");

d. The Ohio Privacy Act, R.C. Chapter 1347;

e. The terms of a collective bargaining agreement; and/or

f. Board Policy.

IX. Must a School District Retain Text Messages or E-mails on *Private* Devices?

A. In true lawyer fashion: it depends. The obligation to retain text messages or e-mails sent from a personal cellphone or account depends on whether they are "public records" in the first place.

1. As stated earlier, "records" include *electronic records*, created or received by or coming under the jurisdiction of any public office, which serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office."

2. In other words, it is the ***content*** that makes them a "record."

Sinclair Media III, Inc. v. Cincinnati, 2019-Ohio-2623. Text messages between city officials were records kept by the city, even though they were retained on the personal, privately paid devices of city officials: "The operative question in this case is not whether the text messages at issue were sent from or stored on personal or private devices, but whether they document the functions, policies, procedures, operations, or other activities of the City."

B. Texts and e-mail messages from private devices, which constitute "public records," must be retained in accordance with applicable records retention schedules.

1. The Public Records Policy of the Ohio Attorney General's Office:

"Email, *text messages*, and instant messages, for example, may be public records if their content documents the business of the office. *Records transmitted to or from private email accounts to conduct public business are subject to disclosure*, and all employees or representatives of the Attorney General's Office are required to retain them in accordance with applicable records retention schedules." (Emphasis added).

2. How do you retain such messages? One suggestion is to forward them to a work e-mail, where they can be printed and stored.

C. "In cases in which public records, including e-mails, are properly disposed of in accordance with a duly adopted records-retention policy, there is no entitlement to those records under the Public Records Act." State ex rel. Toledo Blade Co. v. Seneca Cty. Bd. of Commrs., 120 Ohio St. 3d 372 (2008).

However, if the retention schedule does not address the particular type of record in question, the record must be kept until the schedule is properly amended to address that category of records. Wagner v. Huron Cty. Bd. of Cty. Commrs., 2013-Ohio-3961 (6th Dist., 2013) (a public office must dispose of records in accordance with the then-existing retention schedule and cannot claim that it disposed of records based on a schedule implemented after disposal of requested records).

D. R.C. 149.351(A) prohibits the improper removal or destruction of public records. What are the consequences?

1. Injunction – to compel compliance, and attorney fees. R.C. 149.351(B)(1).

2. Fines – $1,000 for each violation, up to $10,000 (regardless of the number of violations), and reasonable attorney fees. R.C. 149.351(B)(2).

3. Cost of recovering documents.

X. Proper Request for Public Records

A. Who is making the request?

1. The public office may not limit or condition the availability of public records by requiring disclosure of the requester's identity or the intended use of the public record. R.C. 149.43(B)(4).

The public office may ask for the requester's identity and intended use of the information *only if* the public office first informs the requester that he/she may decline to reveal his/her identity and the intended use of the information sought.

2. If the request is for student directory information, the public office may require disclosure of the requester's identity and intended use of the information in order to ascertain whether the information is for use in a profit-making plan or activity. R.C. 3319.321.

B. Must the request be in a certain format?

1. Not required to be in writing. R.C. 149.43(B)(5).

The public office may ask that the request be in writing *only if* the public office first informs the requester that a written request is not mandatory.

2. Records must be identified with sufficient clarity so that the public office can identify, retrieve, and review the records.

C. What if the request is ambiguous or overbroad? R.C. 149.43(B)(2).

1. If a requester makes an ambiguous or overbroad request or has difficulty in making a request for inspection or copies of public records such that the public office cannot reasonably identify what public records are being requested, the public office may deny the request.

a. "All work related e-mails, texts, and correspondence of the public official over the past six months."

b. "All records containing a particular word or name."

2. Upon such denial, the public office must provide the requester with an opportunity to revise the request.

D. Organization of public records. R.C. 149.43(B)(2).

1. The public office must organize and maintain its public records in a manner that they can be made available for inspection or copying.

a. Public offices "have no duty to create or provide access to nonexistent records." State ex rel. Lanham v. Smith, 112 Ohio St.3d 527 (2007).

b. The duty to organize and maintain does not require the public office to store the records in a different form than the form in which they were received. State ex rel. Bardwell v. City of Cleveland, 931 N.E.2d 1080 (Sup. Ct. Ohio 2009).

2. The public office must keep current records retention schedules at a location readily available to the public.

3. If the public office cannot reasonably identify which records are being requested, it must inform the requester how records are maintained and accessed.

XI. Response to Proper Request

A. Is the request to inspect and/or copy records?

1. Records must be promptly prepared and made available for inspection at all reasonable times during regular business hours. R.C. 149.43(B)(1).

a. Without delay and with reasonable speed.

b. Case-by-case basis.

2. Copies of records shall be made within a reasonable period of time. R.C. 149.43(B)(1).

a. "Reasonable period of time."

(1) Depends on the facts and circumstances of the particular request.

(2) Does not mean "immediately" or "without a moment's delay," but courts will find a violation when a public office cannot show that the time taken was reasonable.

b. Examples of "reasonableness" determination.

(1) Forty-five days was not unreasonable where responsive records were voluminous and covered multiple requests. Strothers v. Norton, 131 Ohio St.3d 359, 2012-Ohio-1007.

(2) Given the broad scope of the records requested, the governor's office's decision to review the records before producing them, to determine whether to redact exempt matter, was not unreasonable. State ex rel. Morgan v. Strickland, 121 Ohio St.3d 600, 2009-Ohio-1901.

c. Providing copies. R.C. 149.43(B)(6).

(1) Medium of copy: The individual requesting a record may choose the medium upon which he/she would like the record to be duplicated.

(2) Copy charges.

(a) May only charge the actual cost of producing the copy.

(b) May require pre-payment of copy charges.

(c) May include the actual costs paid to contractors for copying services. State ex rel. Gibbs v. Concord Twp. Trustees, 152 Ohio App.3d 387 (2003).

d. Transmitting copies. R.C. 149.43(B)(7).

(1) Must transmit copies of records via U.S. mail or by any other means of delivery or transmission.

(2) May require pre-payment of delivery costs.

(3) May limit to 10 records per month if district adopts such a policy, 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.

(4) "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.

e. Photographing records: A person is permitted to photograph public records as a means of copying them.

B. Redacting records containing exempt information. R.C. 149.43(B)(1).

1. If a requested public record contains information that is exempt from the duty to permit public inspection, the public office must make available all of the information within the public record that is not exempt.

2. Redaction.

a. Statutorily defined as ". . . 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'. . ." R.C. 149.43(A)(11).

b. Must notify the requester of any redaction or make the redaction plainly visible.

3. Review by court.

C. Denial of a request. R.C. 149.43(B)(3).

1. If a request is ultimately denied, in whole or in part, the public office must provide the requester with an explanation, including legal authority, setting forth why the request was denied.

2. If the request was provided in writing, the explanation also must be provided in writing.

3. The reasons for redacting parts of public records must be provided to the requester.

XII. Conclusion