

A collage of office supplies including papers, a stapler, a binder, and a folder, with text overlaid. The background is a light yellow color with a dark purple horizontal bar at the top and a dark purple vertical bar on the right side. The text is in a bold, serif font, colored light yellow with a dark outline.

**Everything You Ever Wanted To
Know About Open Meetings and
Public Records
(but didn't know how to ask)**

What does the City Attorney do/not do?

- 1. Represent the City in lawsuits**
- 2. Provide legal assistance to the citizens of Delaware**
- 3. Negotiate and review contracts**
- 4. Legal Research**
- 5. Manage the Municipal Prosecutor's Office**
- 6. Prosecute Felonies**
- 7. Ethics**
- 8. Sunshine laws (open meetings/public records)**

Introduction to Sunshine Laws

What does sunshine have to do with government?



Sunshine laws are essential for an ethical and transparent government. The concept being, people act more appropriately in the daylight.

Why Have Public Records and Open Meetings Laws?

- Sunshine concept
 - Transparent & Ethical Government
 - “The rule in Ohio is that public records are the people’s records, and that the officials in whose custody they happen to be are merely trustees for the people...”
Patterson v. Ayers, 171 Ohio St. 369 (1960)
- Examples of Records Requests:
 - Newspaper request for government employee salary information
 - Company request for documents regarding evaluation of bids for contract
 - Requests for emails

OHIO SUNSHINE LAWS R.C. §121.22

Open Meetings Act:

Public bodies must take official action and conduct all deliberations on official business only in open meetings where the public may attend.

Advance notice must be given to let people know when/where the public meeting will happen.

OHIO SUNSHINE LAWS R.C. §121.22

Executive Session: Exception to Open Meeting Requirements

- **Executive sessions:**

- Personnel discussions
- Property transaction discussions
- Negotiation discussions
- (Certain) discussions with legal counsel
- Security arrangements
- Matters required to be kept confidential as required by state or federal law

What is a Public Record?

Official Definition:

Any document, device, or item that is created or received by, or comes under the jurisdiction of a public office that documents the organization, functions, policies, decisions, procedures, operations, or other activities of the office.

Ohio Revised Code § 149.011(G)

Any document, device or item that is created or received by, or comes under the jurisdiction of a public office that documents the organization, functions, policies, decisions, procedures, operations, or other activities of the office.

DOCUMENT OR NOT?

- Email
- Videotape
- Map
- TPS Reports
- Draft Policy
- CD
- Computer File
- Phone Call



Any document, device, or item that is created or received by, or comes under the jurisdiction of a public office that **documents the organization, functions, policies, decisions, procedures, operations, or other activities of the office.**

Whether a particular document, device, or item is a public record will depend on the facts and circumstances surrounding that item.

Public Record?

Any document, device, or item that is created or received by, or comes under the jurisdiction of a public office that documents the organization, functions, policies, decisions, procedures, operations, or other activities of the office.

- Briefing presented to City Council
- Printout of a computer report
- Copies of documents kept for convenience that are stored elsewhere
- Copy of proposals submitted to City for contract opportunity
- Email
- Pictures of family on someone's desk
- Email from City Manager providing update on a project
- Message from a friend inviting an employee to lunch
- Newspaper clipping about something the employee is working on that he/she is keeping because "it's cool."
- Email telling a joke
- Note to call someone back
- Drafts
- Work done from private email account

What's the Big Deal With Doing City Work on Private Email?

The Columbus Dispatch
Ohio's Greatest Online Newspaper

Do not delete

Judge correctly orders White House to preserve e-mail
Tuesday, November 20, 2007 2:39 AM

A federal judge was right to order the White House to preserve backup copies of all its e-mails. Administration officials assert that they already are retaining this data, but U.S. District Judge Henry Kennedy wasn't inclined to take the administration's word for it.

The Columbus Dispatch
Ohio's Greatest Online Newspaper

Panel: Official e-mails public

Private accounts unsuitable for government work
Friday, October 26, 2007 3:39 AM

BY [JIM SIEGEL](#)
THE COLUMBUS DISPATCH

State and local government officials should no longer be allowed to skirt Ohio public-records laws by using private e-mail accounts to conduct official government business.

The Columbus Dispatch
Ohio's Greatest Online Newspaper

Editorial | Open e-mail: Panel right to oppose private communications about public business

Wednesday, October 31, 2007 3:26 AM

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The Columbus Dispatch
Ohio's Greatest Online Newspaper

Legislators to take up 'gray' issue of e-mails

Thursday, April 26, 2007 3:54 AM

BY [JIM SIEGEL](#)
THE COLUMBUS DISPATCH

A 23-member committee will tackle the question of whether e-mails about government business sent through private e-mail accounts are considered public records.

Opinion

THE PLAIN DEALER

Editorial: Government e-mail? The law should say it's for you

Wednesday, March 19, 2008

THE PLAIN DEALER

Where are the missing White House e-mails? Answers are needed - an editorial

The White House needs to answer why it didn't preserve all its e-mails and still can't find them

Saturday, January 19, 2008

JUST DON'T DO IT!

Exceptions

- There are some things that are exempt from disclosure under the Public Records Act
- Two kinds of exemptions
- Examples include:
 - Social security numbers
 - Attorney-Client privilege
 - Security and infrastructure records
 - Medical records
 - Trade Secrets
 - Employee home addresses

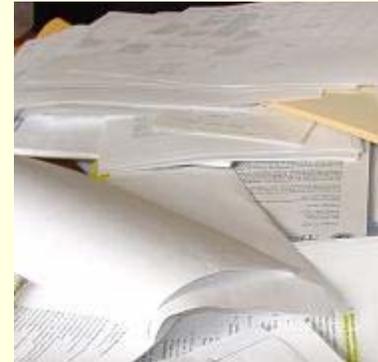
How long does the City have to keep this stuff?

Multiple Choice:

- A) Forever
- B) Go ahead and toss it
- C) Follow retention schedule

Answer = C

The record retention schedule is your friend!



Record Retention Schedules

The Retention Schedule lists how long you have to keep types of documents and what to do with those documents after the retention period.

Lists/Directories	Includes Mailing lists, directories, rosters, and registers compiled by an agency.	Retain until superseded, obsolete, or replaced, then destroy.
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Even if the time period has expired, the City must retain documents that are the subject of pending litigation or an active records request until the matter is resolved.

Making a Records Request

Where do I send my records request?

Best place is to City Attorney to coordinate a response.

Do I have to pay for records?

We charge the actual costs of copies. \$.05 a page, \$1.00 per CD.

Do I have to give my name?

No. But it is recommended in case we have follow up questions.

Do I have to say why I am requesting the records?

No. But it can help us narrow down what you are looking for, which will get you the records faster and keep your copy costs down.

When will I get my records?

- a) Same Day
- b) Weeks and weeks later
- c) Reasonable time
- d) Never

Danger: Use of Attorney Client Privilege and Confidential Labels

To: City Council

From: City Manager

Subject: CONFIDENTIAL

CC: Joe@notcity.com, City Employee 1, City Employee 2, City Employee 3, Darren Shulman (legal).

City Council,

Here is the proposed contract. What do you think?

Attachment: Contract

Simply adding an attorney to an email does not make it privileged.

Calling something “confidential” does not make it confidential under the public records law. Absent a statutory exception, a public entity can not enter into enforceable promises of confidentiality with respect to public records

Proper Use of Attorney-Client Privilege

To: Legal Counsel
From: You
Subject: Request for Legal Advice
CC:

Counsel,

Here is the proposed contract. Would you please review it? When you complete your review, please carbon copy City Manager and Coworker2.

Attachment: Contract

This transmission contains Privileged and Confidential Attorney/Client Communications and/or Attorney Work Product. It is intended only for the use of the individual(s) to whom it is addressed. If you have received this communication in error, please notify me and delete this email from your system. If you are not the intended recipient, you hereby are notified that any retention and/or dissemination of this information is strictly prohibited.

Danger: Creating Records

To: Coworker

From: You

Subject: FW New Policy

Team:

This is a policy legal says we have to follow.

Does this mean we are currently violating the law? Otherwise, why would they send this policy? I think this is stupid.

Attachment: Policy

Danger: Extra Commentary in Email is Part of the Record

To: Coworker

From: Supervisor

Subject: New Policy

Please instruct your team that from now on, we are going to try really hard to follow the Ohio Revised Code.

Oh, and how are you doing? I just got back from vacation and it was awesome. I engaged in inappropriate behavior, but that's what vacations are for, right?

Public Records Are Fascinating, Where Can I Learn More?

Darren Shulman

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