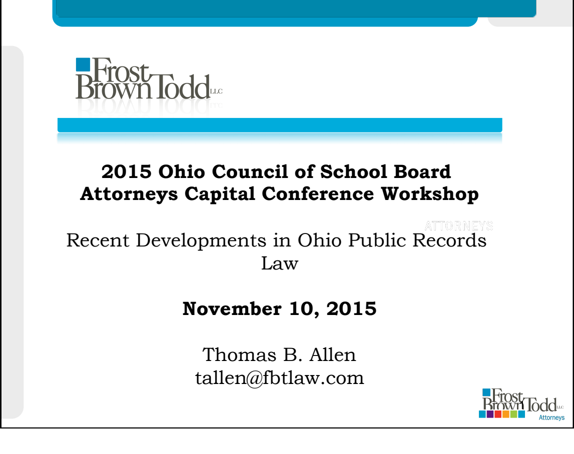

2015 Ohio Council of School Board Attorneys Capital Conference Workshop

Recent Developments in Ohio Public Records Law

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Public Records Act

Pending Legislation

Public Records Act

- 131st General Assembly, H.B. No. 76
  - Amends Public Records Act to include records kept by a police department of a non-profit entity or a campus police department established by a private college or university.
  - Currently in House Judiciary Committee.

Public Records Act

- 131st General Assembly, H.B. No. 130
  - Deals with public entity accounting.
  - Requires posting of data uniformly and in a searchable format.
  - Public entities would opt-in, so not a big issue at this point.
  - Currently in the State Government Committee.

Public Records Act

- 131st General Assembly, H.B. No. 193
  - Among other things, would add federal law enforcement officers to those police officers, etc. whose personal information is protected.
  - Currently in Government Accountability and Oversight Committee.

Public Records Act

- 131st General Assembly, H.B. No. 193
  - Also would establish an address confidentiality program.
  - People who believe they are in physical danger could remove their address from the definition of a public record.

Public Records Act

- 131st General Assembly, H.B. No. 359
  - Would create an address confidentiality program for victims of domestic violence, menacing by stalking, human trafficking, rape, sexual battery, and other crimes.
  - Would amend 149.43 to add a new exception for those participating in the confidentiality program.

Public Records Act

- 131st General Assembly, S.B. No. 83
  - Same as H.B. 193 (establishes the confidentiality program, and removes federal law enforcement officers' personal data from public records status with public offices and auditor)

Public Records Act

Recent Court Decisions

State ex rel. Davis v. Metzger, 139 Ohio St. 3d 423, 2014-Ohio-2329 (Ohio Sup. Ct.)

Facts:

- Requester sought personnel files from a joint fire district.
- District asked him to clarify requests.
- District did not cite legal authority.
- District did not explain how records are kept.

State ex rel. Davis v. Metzger, 139 Ohio St. 3d 423, 2014-Ohio-2329.

- Three business days later, he calls and asks about status.
- He is told they are being reviewed by legal counsel.
- He files a lawsuit that afternoon.
- Documents were provided two hours after suit was filed.
- Result of his lawsuit?

State ex rel. Davis v. Metzger, 139 Ohio St. 3d 423, 2014-Ohio-2329.

- Mandamus denied.
- Issue 1: Was a three-business-day delay reasonable?
  - Yes.
  - Personnel files require careful review by attorneys.

State ex rel. Davis v. Metzger, 139 Ohio St. 3d 423, 2014-Ohio-2329.

- Issue 2: Did District deny his request by asking him to clarify?
  - No.
  - It was not unreasonable to ask him to clarify his requests.
  - It was not necessary to cite legal authority when asking him to clarify his requests.

State ex rel. Davis v. Metzger, 139 Ohio St. 3d 423, 2014-Ohio-2329.

- Important Holding: Only if a request is "ultimately denied" does a public office have an obligation to cite legal authority for a denial. R.C. 149.43(B)(3).

State ex rel. Davis v. Metzger, 139 Ohio St. 3d 423, 2014-Ohio-2329.

Secondary Issue:

- Davis had filed his lawsuit within hours of being told his request was being reviewed.
- He filed unnecessary motions and discovery.
- Never told the Court he received the records.
- What happens?

State ex rel. Davis v. Metzger, 139 Ohio St. 3d 423, 2014-Ohio-2329.

- Has to pay attorneys' fees for engaging in frivolous conduct.

State ex rel. Cincinnati Enquirer v. Lyons, 140 Ohio St. 3d 7 (Ohio Sup. Ct. June 5, 2014).

- Student at Miami University posted a flyer called "Top Ten Ways to Get Away with Rape."
- He was charged with disorderly conduct.
- He pled guilty, with the understanding that his case records would be sealed.

State ex rel. Cincinnati Enquirer v. Lyons, 140 Ohio St. 3d 7 (June 5, 2014).

- He immediately applied to seal all the records.
- Prosecutor did not object, and the court sealed the case records (but using wrong statute).
- Enquirer filed lawsuit for a writ of mandamus, seeking to force the judge to unseal the record.

State ex rel. Cincinnati Enquirer v. Lyons, 140 Ohio St. 3d 7 (June 5, 2014).

- Judge files answer in mandamus action.
- Same day, he unseals record, sets aside conviction, and permits withdrawal of guilty plea.

State ex rel. Cincinnati Enquirer v. Lyons, 140 Ohio St. 3d 7 (June 5, 2014).

- State then dismissed charge.
- Judge then re-sealed record, finding defendant's interest in having records sealed outweighed government interest in maintaining them.

State ex rel. Cincinnati Enquirer v. Lyons, 140 Ohio St. 3d 7 (June 5, 2014).

- Enquirer's arguments:
- 1. The first order was unlawful, because the statute the judge cited did not permit sealing *convictions*.
- 2. Second order was unlawful, because the statute required the judge to set a date for a hearing (he had instead heard it that same day).

State ex rel. Cincinnati Enquirer v. Lyons, 140 Ohio St. 3d 7 (June 5, 2014).

- Two statutes govern the sealing of records: R.C. 2953.32 (sealing convictions), and R.C. 2953.52 (sealing non-convictions).
- For the *conviction*, R.C. 2953.32 applies.

State ex rel. Cincinnati Enquirer v. Lyons, 140 Ohio St. 3d 7 (June 5, 2014).

- R.C. 2953.32 requires a waiting period of one year before applying to seal a misdemeanor conviction.
- Just argued “minor misdemeanor” convictions don’t count as convictions.
- Court disagreed.

State ex rel. Cincinnati Enquirer v. Lyons, 140 Ohio St. 3d 7 (June 5, 2014).

- For the sealing of the records relating to the *dismissal*, R.C. 2953.52 applies.
- It does not require a waiting period.
- It does, however, require the court to set a date for the hearing.

State ex rel. Cincinnati Enquirer v. Lyons, 140 Ohio St. 3d 7 (June 5, 2014).

- Court believed that this statement meant it could not be done that day, as the judge had done.
- Records were therefore improperly sealed.

State v. Rodriguez, 2014-Ohio-2583 (12th Dist. June 16, 2014).

- Heroin dealer is convicted.
- Seeks public records. Tries to get his conviction overturned several ways: application for reconsideration, petition for habeas corpus, and an application for clemency with the governor.
- Statute: Inmates can't get public records unless trial court verifies that the records are necessary to support a justiciable claim.

State v. Rodriguez, 2014-Ohio-2583 (12th Dist. June 16, 2014).

Issue:
- Is an application for clemency a justiciable claim?
- Heroin dealer argues yes.
- Court holds no.

State ex rel. Papa v. Starkey, 2014-Ohio-2989 (5th Dist. June 30, 2014).

Facts:

- Inmate sought records relating to criminal prosecution.
- Did not get the required statement from a judge.
- Argued he did not need to, allegedly because the criminal records sought had to relate to his own case in order to require the statement.
- Result?

State ex rel. Papa v. Starkey, 2014-Ohio-2989 (5th Dist. June 30, 2014).

- Denied.
- Statute: "A public office is not required to permit a person who is incarcerated to obtain a copy of any public record concerning a criminal investigation . . . ."
- Statute, by its very terms, is not limited to one's own criminal case.

State ex rel. Podolsky v. Wenninger, 2014-Ohio-3288 (12th Dist. July 28, 2014).

Another records sealing case.

- Trial court had sealed records relating to the acquittal of a future sheriff.
- A web newspaper filed a motion to unseal the records.

State ex rel. Podolsky v. Wenninger, 2014-Ohio-3288 (12th Dist. July 28, 2014).

- Trial court denied request, explaining that the original trial court had properly sealed the records.
- Web newspaper appeals.

State ex rel. Podolsky v. Wenninger, 2014-Ohio-3288 (12th Dist. July 28, 2014).

Several issues discussed:

- 1. Newspaper argued that its motion to unseal was a taxpayer action under R.C. 309.13.
- Court rejects: A taxpayer action (to recover money illegally withdrawn from the county treasury) is not a vehicle that can be used to unseal court records.

State ex rel. Podolsky v. Wenninger, 2014-Ohio-3288 (12th Dist. July 28, 2014).

- 2. Newspaper argued that it was entitled to the records under Rules of Superintendence 44 through 47.
- Rules were effective July 1, 2009.
- They are the sole vehicle for obtaining sealed court records after that date.
- However, this action was filed well before then: Rules of Superintendence do not apply.

State ex rel. Podolsky v. Wenninger, 2014-Ohio-3288 (12th Dist. July 28, 2014).

- 3. Newspaper argued that it was entitled to the sealed records under R.C. 2953.53.
- Once records are sealed pursuant to that provision, only certain people can access them:
  - (1) the person who is the subject of the records; (2) a law enforcement officer who is getting sued as a result of the action; or (3) the prosecutor.

State ex rel. Podolsky v. Wenninger, 2014-Ohio-3288 (12th Dist. July 28, 2014).

- Newspaper did not fit into these categories, so that argument did not work.

State ex rel. Podolsky v. Wenninger, 2014-Ohio-3288 (12th Dist. July 28, 2014).

- 4. Newspaper argued that it was entitled to the sealed records under R.C. 149.43.
- Denied. Sealed court records are an exception to the Public Records Act.
  - Newspaper: improperly sealed records do not count.
  - Court rejected this argument, because the records were properly sealed.

State ex rel. Podolsky v. Wenninger, 2014-Ohio-3288 (12th Dist. July 28, 2014).

- 5. Newspaper argued that it was entitled to the records under the First Amendment.
  - (First Amendment gives a qualified right of access to criminal proceedings.)
- First Amendment does not give right of access to properly sealed *records*, so that argument failed.

State ex rel. Plunderbund Media v. Born, 2014-Ohio-3679 (Ohio Sup. Ct. Aug. 27, 2014)

Facts:

- Plunderbund, a media company, sought records from the Ohio Department of Public Safety (DPS).
- Company sought all records and investigations conducted by the Ohio State Highway Patrol regarding threats made against the governor.

State ex rel. Plunderbund Media v. Born, 2014-Ohio-3679 (Aug. 27, 2014)

- DPS refused, asserting that the records were exempt under Ohio's exemption for security and infrastructure records, Ohio Rev. Code § 149.433.
- Statute exempts "[a]ny record that contains information directly used for protecting or maintaining the security of a public office against attack, interference, or sabotage."
- The media company sued.

State ex rel. Plunderbund Media v. Born, 2014-Ohio-3679 (Aug. 27, 2014)

- Plunderbund argued that definition of “public office” did not include *individuals*.
- Result?

State ex rel. Plunderbund Media v. Born, 2014-Ohio-3679 (Aug. 27, 2014)

Mandamus denied.

- Court: A public office cannot function without employees. Therefore, records used for protecting the office “inevitably” include records governing protected employees, officeholders, and other individuals.
- Because the records revealed security measures and information used to protect the governor from attack, they were exempt as security records.

Salemi v. Cleveland Metroparks, 2014-Ohio-3914 (Ohio Sup. Ct. Sept. 9, 2014)

- Cleveland Metroparks operates eight golf courses.
- Competing course owner sought many records from Metroparks:
  - E-mail addresses of people who have signed up for e-mail lists;
  - E-mail address for anyone who booked tee times electronically;

Salemi v. Cleveland Metroparks, 2014-Ohio-3914 (Sept. 9, 2014)

- Names of people, businesses, or corporations that had outings or events for two prior years.
- Marketing program, and the business plan to market the courses.
- Copies of checks spent to market course, the contract with marketers, agreements with tee time sellers, and minutes of meetings relating to course marketing.
- He does not get, and sues. Result?

Salemi v. Cleveland Metroparks, 2014-Ohio-3914 (Sept. 9, 2014)

Partially denied.

- E-mail addresses and identities fell within the realm of a client-customer list (a trade secret).
- Marketing program was also a trade secret.
  - Metroparks had developed a confidential and specialized program.

Salemi v. Cleveland Metroparks, 2014-Ohio-3914 (Sept. 9, 2014)

BUT—

- City did have to provide checks, contracts, agreements, minutes of meetings, e-mails, etc. relating to marketing of courses.
- City had not proven that those records were trade secrets.
- Question: Does he now get fees?

Salemi v. Cleveland Metroparks, 2014-Ohio-3914 (Sept. 9, 2014)

  - No, he was acting pro se.
- Does he get statutory damages?
  - No, he did not submit by hand-delivery or certified mail.

City of Columbus v. Lyft, Inc., 22 N.E.2d 304 (Franklin County Mun. Court Sept. 19, 2014)

Facts:

- City brought action against transportation network company.
- Sought to enjoin them from working in City.
- City also sought a number of public records regarding Lyft drivers.

City of Columbus v. Lyft, Inc., 22 N.E.2d 304 (Franklin County Mun. Court Sept. 19, 2014)

- City requested following information about drivers:
  - names;
  - dates of birth;
  - contact information;
  - physical descriptions;
  - proof of citizenship;
  - felony records; and
  - vehicle descriptions.
- Result?

City of Columbus v. Lyft, Inc., 22 N.E.2d 304 (Franklin County Mun. Court Sept. 19, 2014)

Partially denied:

- Names and contact information were exempt, as trade secrets.
  - Much work went into compiling this list, and it was treated as a trade secret.

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City of Columbus v. Lyft, Inc., 22 N.E.2d 304 (Franklin County Mun. Court Sept. 19, 2014)

- Dates of birth and contact information were sensitive personally identifiable information.
  - Therefore exempt.
  - Also did not serve to further or enhance oversight over a governmental function, or serve the right of the public to monitor government.

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City of Columbus v. Lyft, Inc., 22 N.E.2d 304 (Franklin County Mun. Court Sept. 19, 2014)

BUT—

- Physical descriptions, proof of citizenship, felony records, and vehicle descriptions were public records.
  - No exemption, and had to be produced.

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State ex rel. Pine Tree Towing & Recovery v. McCauley, 2014-Ohio-4331 (5th Dist. Sept. 26, 2014)

Facts:

- Towing company sought a large number of records from sheriff relating to his towing policies.
- Sheriff responds by noting that the request is large, and that it would need more time to respond.

State ex rel. Pine Tree Towing & Recovery v. McCauley, 2014-Ohio-4331 (5th Dist. Sept. 26, 2014)

Facts:

- Two weeks later, Sheriff again states he will need more time.
- Two months later, towing company sues.

State ex rel. Pine Tree Towing & Recovery v. McCauley, 2014-Ohio-4331 (5th Dist. Sept. 26, 2014)

- Before answering, sheriff provides the records (776 pages).
- Mandamus action (to order sheriff to provide records) is now moot, because the records have been provided.
- Issue: Was the 95 days it took to provide the records reasonable?

State ex rel. Pine Tree Towing & Recovery v. McCauley, 2014-Ohio-4331 (5th Dist. Sept. 26, 2014)

Yes!

- Why?
  - Sheriff twice notified towing company that he needed more time.
  - Company never responded.
  - In court, the lieutenant stated it took 399 man-hours to compile the response.

State ex rel. Pine Tree Towing & Recovery, Inc. v. McCauley, 2014-Ohio-4331 (5th Dist. Sept. 26, 2014)

- He also attached an outline of his duties, which was 7 pages, single-spaced. Responding to public records requests was only a small part of his duties.
- He provided a detailed log of when he worked on them.

State ex rel. Pine Tree Towing & Recovery, Inc. v. McCauley, 2014-Ohio-4331 (5th Dist. Sept. 26, 2014)

- He had to do those duties at the same time.
- He even worked on the request in his off-hours.
- In light of those facts, the court concluded that 95 days was a reasonable time to produce the documents.

State ex rel. Verhovec v. Village of Dennison, 2014-Ohio-4847 (5th Dist. Oct. 30, 2014)

Facts:

- Ed Verhovec has filed a number of actions in the past.
- He had sought forfeitures for destroyed records.
- The many courts that looked at his actions eventually concluded that he was not "aggrieved," and therefore could not take advantage of the forfeiture provision.

State ex rel. Verhovec v. Village of Dennison, 2014-Ohio-4847 (5th Dist. Oct. 30, 2014)

- He has now enlisted his nephew to file lawsuits.
- Nephew seeks council meeting minutes, handwritten draft minutes, and audio/video recordings from January 1990 to present.

State ex rel. Verhovec v. Village of Dennison, 2014-Ohio-4847 (5th Dist. Oct. 30, 2014)

- Village offers access to all documents.
- Mandamus action was therefore moot, because he was granted access to all existing documents.
- Now he wants fees for the destroyed documents.
- Does he get his fees?

State ex rel. Verhovec v. Village of Dennison, 2014-Ohio-4847 (5th Dist. Oct. 30, 2014)

No. Denied. Like his uncle, he is not "aggrieved."

- He admits he only sought the records for his uncle.
- He did not know what time period he sought the records for.
- He did not know why the records were requested.

State ex rel. Verhovec v. Village of Dennison, 2014-Ohio-4847 (5th Dist. Oct. 30, 2014)

- He was not a resident of the Village.
- He had no economic connections to the Village.
- He did not draft the letters.

State ex rel. Verhovec v. Village of Dennison, 2014-Ohio-4847 (5th Dist. Oct. 30, 2014)

- He did not know if the Village complied with his request.
- He never sought to review the records offered.
- He simply forwarded the responses to his uncle.

State ex rel. Verhovec v. Village of Dennison, 2014-Ohio-4847 (5th Dist. Oct. 30, 2014)

- Court found that he was a shill for his uncle.
- This was not a legitimate request, but instead part of a scheme to find destroyed records so that it could result in monetary gain.

Hunter v. Ohio BWC, 2014-Ohio-5560 (10th Dist. Dec. 23, 2014)

Facts:

- Terminated employee sought numerous records:
  - handwritten notes of disciplinary meetings;
  - handwritten notes of an investigation;
  - all discipline documents kept by a former employee.

Hunter v. Ohio BWC, 2014-Ohio-5560 (10th Dist. Dec. 23, 2014)

- BWC provided none of these documents.
- BWC's policy: destroy handwritten notes once a final, formal document is prepared.
- BWC treated handwritten notes as "transient records."
- Is this proper?

Hunter v. Ohio BWC, 2014-Ohio-5560 (10th Dist. Dec. 23, 2014)

- Yes.
  - The handwritten notes are not public records. They were not shared with anyone else, and were created only to help interviewer remember what happened.
  - Therefore, they can be destroyed.
  - Terminated employee does not get his forfeiture.

Hunter v. Ohio BWC, 2014-Ohio-5560 (10th Dist. Dec. 23, 2014)

- The former employee also sought "all disciplinary records" kept by another employee.
- The other employee had left in 2008.
- BWC did not have any disciplinary records that the other employee kept.

Hunter v. Ohio BWC, 2014-Ohio-5560 (10th Dist. Dec. 23, 2014)

- BWC replied that if the requester could identify a specific document, the BWC would try to find the document.
- Is that an appropriate response?

Hunter v. Ohio BWC, 2014-Ohio-5560 (10th Dist. Dec. 23, 2014)

Yes.

- First, the request was overbroad.
- Second, he did not respond to their response with a more specific request, or claim that the response was improper.
- Court therefore rejected this second request as well.

State ex rel. Community Journal v. Reed, 2014-Ohio-5745 (12th Dist. Dec. 30, 2014)

Facts:

- Clermont County Sheriff's Office and Goshen Township asked BCI to investigate possible theft of money from a drug bust.
- Police departments sent 700 pages of documents.

State ex rel. Community Journal v. Reed, 2014-Ohio-5745 (12th Dist. Dec. 30, 2014)

- Community Journal requested all of the documents.
- BCI denied: asserted that the records were confidential law enforcement investigatory records, and releasing them would create a high probability of disclosing specific work product.
- BCI sends a couple of records. Journal sues.

State ex rel. Community Journal v. Reed, 2014-Ohio-5745 (12th Dist. Dec. 30, 2014)

- BCI eventually concluded the investigation, and turns over the records. Still redacts some information.
- In the lawsuit, Journal served interrogatories, asking about the documents.
- BCI objected.
- Issue: Does it have to answer the interrogatories, even if it does not have to produce the documents?

State ex rel. Community Journal v. Reed, 2014-Ohio-5745 (12th Dist. Dec. 30, 2014)

No.

- Answering the interrogatories could reveal the identity of an uncharged suspect, the identity of a confidential source, or confidential investigatory techniques or procedures.

State ex rel. Community Journal v. Reed, 2014-Ohio-5745 (12th Dist. Dec. 30, 2014)

Merits of lawsuit:

- Does the entire BCI file qualify for the confidential law enforcement investigatory records exception?
- Some of the documents submitted were incident reports.

State ex rel. Community Journal v. Reed, 2014-Ohio-5745 (12th Dist. Dec. 30, 2014)

- Yes, they meet the first part of the test: they were compiled or assembled by a law enforcement agency.
- One central question: were they BCI's records, or the police department's records?
- Court held that the documents were never BCI's records. There were the police department's records.

State ex rel. Community Journal v. Reed, 2014-Ohio-5745 (12th Dist. Dec. 30, 2014)

The redactions: were they proper?

- The basis for the redaction was the grand jury subpoena exception and the uncharged suspect exemption.
- The Court did not address this issue, because the records were never BCI's records in the first place.
- Judge Hendrickson dissented, noting that the records were in fact BCI's records, even though they originated with other police agencies.

State ex rel. Cincinnati Enquirer v. Sage, 2015-Ohio-974 (Ohio Sup. Ct. Mar. 19, 2015)

Facts:

- Person called 911 and hung up. 911 operator called back.
- Killer answered the call and confessed to everything. Newspaper sought the 911 call-back.
- Prosecutor and judge withheld, citing the impact release would have on the defendant's right to a fair trial.

State ex rel. Cincinnati Enquirer v. Sage, 2015-Ohio-974 (Mar. 19, 2015)

- Court of Appeals holding in 2014: they had to turn over the 911 call.
- The reason was that fair trial concerns could be addressed with limiting instructions, voir dire, change of venue, continuances, and other protective measures.
- But no fees are awarded.
- How does it come out in the Ohio Supreme Court?

State ex rel. Cincinnati Enquirer v. Sage, 2015-Ohio-974 (Mar. 19, 2015)

- The 911 call was a public record, so court of appeals' decision affirmed.
- On the fees issues, the Ohio Supreme Court concluded that Court of Appeals abused its discretion when it denied attorney's fees to the Enquirer.

State ex rel. Cincinnati Enquirer v. Sage, 2015-Ohio-974 (Mar. 19, 2015)

Analysis:

- Judge Sage argued that the return 911 call was a trial preparation record.
- Rule: a trial preparation record must be created in reasonable anticipation of a civil or criminal trial.
- When 911 operator returned the call, she did not know a crime had been committed. So that exception does not apply.

State ex rel. Cincinnati Enquirer v. Sage, 2015-Ohio-974 (Mar. 19, 2015)

- Also, if a record has dual purposes, it cannot be a trial preparation record.
- Judge Sage also argued that it was a trial preparation record, because it became a part of the prosecution's file.
- Court rejected that argument, because not everything in a prosecutor's file is a trial preparation record.

State ex rel. Cincinnati Enquirer v. Sage, 2015-Ohio-974 (Mar. 19, 2015)

- Trial judge also argued it was confidential law enforcement investigatory record, under the specific confidential law enforcement procedure or techniques exception (or specific investigatory work product).
- Court rejected.
- Work product means notes, working papers, memoranda, etc.

State ex rel. Cincinnati Enquirer v. Sage, 2015-Ohio-974 (Mar. 19, 2015)

- This phone call did not meet that definition, for two reasons:
  - 911 operator was not a law enforcement official.
  - She was not questioning the caller in anticipation of litigation.

State ex rel. Cincinnati Enquirer v. Sage, 2015-Ohio-974 (Mar. 19, 2015)

- Trial judge also argued that the record fell within the catch-all exception, for records the release of which is prohibited by law.
- Here, the law was the U.S. Constitution. Reason: release would prejudice defendant's Sixth Amendment right to a fair trial.
  - However, the Court had already recognized that exact reason to render something not a public record.

State ex rel. Cincinnati Enquirer v. Sage, 2015-Ohio-974 (Mar. 19, 2015)

- Judge Sage argued that the Court had to balance First Amendment right to access versus Sixth Amendment right to fair trial.
- Court said no, not a First Amendment issue, because the newspaper was seeking a physical piece of evidence, not access to the proceedings.
- So question was whether release would unfairly prejudice his rights to a fair trial. There was no evidence in the record that it would.

State ex rel. Cincinnati Enquirer v. Sage, 2015-Ohio-974 (Mar. 19, 2015)

Attorney's fees issue:

- Court of appeals denied fees, because trial court acted reasonably, in good faith, and that there was little public benefit in releasing the record.
- Ohio Supreme Court said this is the right analysis.
- It held, however, that the Court of Appeals abused its discretion in concluding that fees were not warranted.

State ex rel. Cincinnati Enquirer v. Sage, 2015-Ohio-974 (Mar. 19, 2015)

- My read: Ohio Supreme Court did not like the fact that a 911 call was not produced.
- Court concluded that the reasons for withholding it lacked merit.

State ex rel. Cincinnati Enquirer v. Sage, 2015-Ohio-974 (Mar. 19, 2015)

- Court then also did not like the fact that the prosecutor sought and obtained a protective order from Judge Sage in the criminal case.
- That forced the Enquirer to get involved in the criminal case and to file a mandamus action, expending more legal fees than it should have.

State ex rel. Quolke v. Strongsville City. Sch. Dist. Bd. of Educ., 2015-Ohio-1083 (Ohio Sup. Ct. Mar. 25, 2015)

- School teachers went out on strike.
- School board interviewed applicants.
- 100 people chanted, jeered, and cursed at the applicants as they came in.

State ex rel. Quolke v. Strongsville City. Sch. Dist. Bd. of Educ., 2015-Ohio-1083 (Mar. 25, 2015)

- They took pictures of the applicants, and screamed obscenities at an applicant who came in with her two young children.
- Applicants were shaking, in tears, and afraid to leave the building.

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State ex rel. Quolke v. Strongsville City. Sch. Dist. Bd. of Educ., 2015-Ohio-1083 (Mar. 25, 2015)

- During strike, people continued to harass replacements.
- Notes were left in classrooms with offensive messages.

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State ex rel. Quolke v. Strongsville City. Sch. Dist. Bd. of Educ., 2015-Ohio-1083 (Mar. 25, 2015)

- Signs were placed in neighborhoods where the replacements lived, identifying replacements by name, and disclosing their address.
- The Union posted a wall of shame on website with pictures of the replacements.

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State ex rel. Quolke v. Strongsville City. Sch. Dist. Bd. of Educ., 2015-Ohio-1083 (Mar. 25, 2015)

- A striking teacher cut off a van carrying replacement teachers (he was arrested).
- A person pulled up next to a replacement teacher in her car, called her a scab, and threw an object at her car and broke the windshield.

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State ex rel. Quolke v. Strongsville City. Sch. Dist. Bd. of Educ., 2015-Ohio-1083 (Mar. 25, 2015)

- After strike was over, president of teachers' union sought names and identification numbers of replacement teachers used during strike.
- School denies request, asserting privacy rights and safety concerns.
- Union president sues.
- Result?

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State ex rel. Quolke v. Strongsville City. Sch. Dist. Bd. of Educ., 2015-Ohio-1083 (Mar. 25, 2015)

- Court of appeals ordered release.
- Also awarded Union president $8,000 in fees.
- Result in Ohio Supreme Court?

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State ex rel. Quolke v. Strongsville City. Sch. Dist. Bd. of Educ., 2015-Ohio-1083 (Mar. 25, 2015)

- Affirmed. Records were public.
- The risk of harm disappeared once strike was over. No evidence of threats or physical harm *after* strike.
- School could withhold during strike, but not after.
- Attorney's fees also affirmed.

State ex rel. Schiffbauer v. Banaszak, 2015-Ohio-1854 (Ohio Sup. Ct. May 21, 2015).

- Private university (Otterbein) employs a police force.
- The officers are sworn, state-certified police officers.
- They exercise plenary police powers.

State ex rel. Schiffbauer v. Banaszak, 2015-Ohio-1854 (May 21, 2015).

- Editor of student news website sought records of cases the university referred to the city of Westerville's Mayor's court.
- University denies request: we are private university, and therefore not subject to the Public Records Act.

State ex rel. Schiffbauer v. Banaszak, 2015-Ohio-1854 (Ohio May 21, 2015).

- Student files lawsuit.
- Result?

State ex rel. Schiffbauer v. Banaszak, 2015-Ohio-1854 (Ohio May 21, 2015).

Issue: Is the police department of a private university a public office?

- Answer: yes.
- First, private universities can hire only officers who have completed the Ohio peace officer training commission requirements.
- Second, those officers are vested with the same authority as a city police officer or sheriff.

State ex rel. Schiffbauer v. Banaszak, 2015-Ohio-1854 (Ohio May 21, 2015).

- The department itself is established to exercise a function of government.
- It is performing a function that is historically a governmental function.
- Court did not consider the traditional *Oriana House* test, because the police force met the definition of public office in R.C. 149.011(A): an organized body established by the laws of this state to exercise a function of government.

State ex rel. Schiffbauer v. Banaszak, 2015-Ohio-1854 (Ohio May 21, 2015).

- This decision should have a big impact across the state. Every private college or university that hires such a police force is now subject to the Public Records Act.

State ex rel. Santefort v. Board of Trustees of Wayne Township, 2015-Ohio-2009 (12th Dist. May 26, 2015)

Facts:

- Citizen requested documents from township, including the handwritten notes created by the township's fiscal officer.
- Township provided all records, other than the handwritten notes.
- Township stated that the fiscal officer no longer had the notes.

State ex rel. Santefort v. Board of Trustees of Wayne Township, 2015-Ohio-2009 (12th Dist. May 26, 2015)

- Citizen sues.
- Trial court rules in favor of Township.
- Citizen appeals.
- Result?

State ex rel. Santefort v. Board of Trustees of Wayne Township, 2015-Ohio-2009 (12th Dist. May 26, 2015)

- Mandamus denied.
- Witnesses testified that no one else saw the notes.
- Also, the notes only served as reminder of what occurred at the meeting (when the fiscal officer typed the minutes).

State ex rel. Santefort v. Board of Trustees of Wayne Township, 2015-Ohio-2009 (12th Dist. May 26, 2015)

- Fiscal officer testified:
  - she does not bring her notes to the Township office:
  - she destroys them after the trustees have approved the official minutes.

State ex rel. Santefort v. Board of Trustees of Wayne Township, 2015-Ohio-2009 (12th Dist. May 26, 2015)

- It is well-established that personal notes taken by a public official for convenience to recall events are not a public record.
- Citizen argued that this case was different. Why? The fiscal officer had a legal duty to record the Township's meetings.
- Result of that argument?

State ex rel. Santefort v. Board of Trustees of Wayne Township, 2015-Ohio-2009 (12th Dist. May 26, 2015)

- Court rejected. Her personal notes were not draft minutes.
- Her personal notes went into the minutes, but so did other things, such as things from her memory.
- No one else had access to the notes, and they were not kept.

State ex rel. Santefort v. Board of Trustees of Wayne Township, 2015-Ohio-2009 (12th Dist. May 26, 2015)

- Citizen also claimed damages for not receiving the other documents in a timely manner.
- Citizen requested documents on March 21, and did not receive them until April 21.

State ex rel. Santefort v. Board of Trustees of Wayne Township, 2015-Ohio-2009 (12th Dist. May 26, 2015)

- However, the township had mailed them to requester two days after the request.
- He simply did not receive them.
- Mailing was sufficient to comply with the duties of the Act.

Teodecki v. Litchfield Twp., 2015-Ohio-2309 (9th Dist. June 15, 2015)

- Facts:
- Township sergeant investigates alleged internal breach of law.
- Report implicates fire chief.
- Fire chief resigns pursuant to a settlement agreement .
- Resolution adopting Settlement agreement notes that the results of the investigation shall be kept confidential.

Teodecki v. Litchfield Twp., 2015-Ohio-2309 (9th Dist. June 15, 2015)

- Fire chief writes nasty letter to the editor.
- Township revokes confidentiality agreement, and releases report.
- Former fire chief sues for breach of contract.
- Result?

Teodecki v. Litchfield Twp., 2015-Ohio-2309 (9th Dist. June 15, 2015)

- She loses.
- The report was a public record, and township could not contract obligation that way.
- Query: How to keep that report from being a public record?

State ex rel. Carr v. London Correctional Institution, 2015-Ohio-2363 (Ohio Sup. Ct. June 18, 2015)

- Facts:
- In January, 2012, prison chaplain sends memo to mailroom supervisors regarding religious organizations and contraband in mail.
- Next month, inmate learns of it. Asks mailroom for a copy.
- Employee admits it exists, but refuses to give him a copy.

State ex rel. Carr v. London Correctional Institution, 2015-Ohio-2363 (Ohio Sup. Ct. June 18, 2015)

- Employee directs him to chaplain.
- Inmate goes to chaplain.
- Chaplain also refuses to provide it.
- Inmate then hand-delivers request to inspector of institutional services, to be provided to warden's assistant, whose duties include responding to public records requests.

State ex rel. Carr v. London Correctional Institution, 2015-Ohio-2363 (Ohio Sup. Ct. June 18, 2015)

- Request is quite detailed.
  - Seeks the 'interoffice memo that the chaplain wrote to the mail room.'
  - Identifies the memo as being sent in January or February 2012.
  - Notes that the memo contains information relating to the ministries.
  - Explains that the memo dealt with how the mail room is to handle religious material received by the mail room.

State ex rel. Carr v. London Correctional Institution, 2015-Ohio-2363 (Ohio Sup. Ct. June 18, 2015)

- Director of institutional services denies request.
  - Asserts that the request is ambiguous, overbroad, and unduly burdensome to produce.
- Inmate therefore hand-delivers a second request:
  - Seeks copes of all e-mails and interoffice memos from the chaplain to the mailroom during January and February 2012.

State ex rel. Carr v. London Correctional Institution, 2015-Ohio-2363 (Ohio Sup. Ct. June 18, 2015)

- Director of institutional services denies second request.
  - Asserts that the second request is ambiguous, overbroad, and unduly burdensome to produce.
- Inmate therefore hand-delivers a third request:
  - Seeks copes of all e-mails and interoffice memos from the chaplain to the mailroom during February 2012.

State ex rel. Carr v. London Correctional Institution, 2015-Ohio-2363 (Ohio Sup. Ct. June 18, 2015)

- Director of institutional services denies third request.
  - Asserts that the third request is ambiguous, overbroad, and unduly burdensome to produce.
- Inmate therefore hand-delivers a fourth request:
  - Seeks copes of all e-mails and interoffice memos from the chaplain to the mailroom on March 5, 2012, plus a copy of the records retention schedule.

State ex rel. Carr v. London Correctional Institution, 2015-Ohio-2363 (Ohio Sup. Ct. June 18, 2015)

- Director of institutional services provides documents responsive to fourth request.
- Inmate never gets records in response to first, second, and third requests.
- Therefore sues.
- Result in Court of Appeals?

State ex rel. Carr v. London Correctional Institution, 2015-Ohio-2363 (Ohio Sup. Ct. June 18, 2015)

- Mandamus denied.
- All requests were overbroad.
  - Required entity to search records.
  - Court reasoned that inmate sought an entire duplication of communications (through all memoranda and all emails between Chaplain Cahill and the mailroom and/or its supervisors).
  - That is an overbroad request.
  - Result on appeal to Ohio Supreme Court?

State ex rel. Carr v. London Correctional Institution, 2015-Ohio-2363 (Ohio Sup. Ct. June 18, 2015)

- Reversed. Requests were not overbroad.
  - Holding: to constitute improper research, a request must require the entity to search through voluminous documents for those that contain certain information.
  - Here, first request identified a particular record by specific author, to whom it was sent, and a time frame when it was sent.
  - Employees confirmed the specific document existed.

State ex rel. Carr v. London Correctional Institution, 2015-Ohio-2363 (Ohio Sup. Ct. June 18, 2015)

- The Court has never required a precise date, when a document is otherwise reasonably identifiable.
- As to second and third requests:
  - Also valid. Sought communications from one individual to an identified department, over a two month period.

State ex rel. Carr v. London Correctional Institution, 2015-Ohio-2363 (Ohio Sup. Ct. June 18, 2015)

- Court distinguished prior cases:
  - This request is unlike *Zauder* case, where the method of retrieval did not work well with request.
  - Also unlike *Zidonis* case, where individual requested "all litigation files" and "all complaint files."

State ex rel. Carr v. London Correctional Institution, 2015-Ohio-2363 (Ohio Sup. Ct. June 18, 2015)

  - Also unlike *Glasgow*, where requester sought every communication during her term in office (6 months).
  - Also unlike *Diller v. Icsman*, where the records sought were "all records that contained a reference" to the requester.

State ex rel. Carr v. London Correctional Institution, 2015-Ohio-2363 (Ohio Sup. Ct. June 18, 2015)

- Damages and costs:
  - He also gets statutory damages.
  - Court of Appeals' reasoning was flawed. Although inmate did eventually receive a version of the memo, he never received the one he sought.

State ex rel. Carr v. London Correctional Institution, 2015-Ohio-2363 (Ohio Sup. Ct. June 18, 2015)

- Plus, it was hand-delivered to a prison official. Although not the official in charge of responding to public records requests, he had no access to her, so hand-delivery to the prison inspector was sufficient.

State ex rel. Carr v. London Correctional Institution, 2015-Ohio-2363 (Ohio Sup. Ct. June 18, 2015)

- Should damages be reduced?
- 149.43(C)(1): permits damages to be denied or reduced if: (1) the entity reasonably believed its position was correct, and (2) the response serves the public policy underlying the legal authority relied upon.

State ex rel. Carr v. London Correctional Institution, 2015-Ohio-2363 (Ohio Sup. Ct. June 18, 2015)

- No.
  - No reasonable person could think that a request for a single document was overbroad or unduly burdensome.
  - No reasonable person could think the request was ambiguous, because he identified the authority, recipient, and approximated date of the memo.

State ex rel. Carr v. London Correctional Institution, 2015-Ohio-2363 (Ohio Sup. Ct. June 18, 2015)

- Document was not produced for a year.
- He gets maximum damages ($100 per day, capped at $1,000).
- He also was awarded his courts costs, which are to be determined on remand.

Fischer v. Kent State Univ., 2015-Ohio-2363 (10th Dist. Sept. 1, 2015)

- Facts:
- Retired university professor files EEOC charge against university.
- University's attorneys use information from the professor's personnel file in the response to his EEOC charge.
- University professor sues, claiming a violation of Ohio's Privacy Act, R.C. 1347.10.
- Result?

Fischer v. Kent State Univ., 2015-Ohio-2363 (10th Dist. Sept. 1, 2015)

- Denied.
- Statute specifically says that the release of public records, or disclosure of personal information in a public record, is not a violation.
- Because EEOC filings and proceedings are public records, lawsuit is dismissed.

Public Records Act

- Attorney General Opinions

Donald L. Crain, 2014 Op. Att'y Gen. No. 2014-029 (July 10, 2014)

- Township fiscal officer sent an e-mail to several hundred people from his private e-mail address.
- Citizen sought a copy of the e-mail.
- Township provided a copy of the e-mail, but redacted the personal e-mail addresses, asserting that personal e-mail addresses, like home addresses, were not "records."

Donald L. Crain, 2014 Op. Att'y Gen. No. 2014-029 (July 10, 2014)

- Citizen threatens to sue.
- Township seeks formal opinion from Attorney General.
- Result?

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Donald L. Crain, 2014 Op. Att'y Gen. No. 2014-029 (July 10, 2014)

- Answer depends on the facts of each case.
- Issue: whether the personal e-mail addresses shed light on the workings of government.

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Donald L. Crain, 2014 Op. Att'y Gen. No. 2014-029 (July 10, 2014)

- Factors to consider:
  - Was the e-mail sent as part of the fiscal officer's official responsibilities?
  - Are the recipients Township residents?
  - Are the e-mail addresses maintained in a Township database?

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Donald L. Crain, 2014 Op. Att'y Gen. No. 2014-029 (July 10, 2014)

  - Did the recipients provide their e-mail addresses to the Township to receive e-mail as part of its official activities?
- In this case, the answer to most of these questions was no, so the Township did not provide the personal e-mail addresses.
- Citizen did not pursue the matter after receiving this opinion.

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Questions and Answers

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