



## Medina County Clerk Policy Manual



<b>Policy: Introduction</b>	<b>Section: Records Management</b>	<b>Number: 12.001</b>
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The Clerk of Courts is legally responsible for receiving, managing and preserving the documents and records of the court – including, but not limited to case pleadings, court orders and entries and administrative documents.

A primary responsibility of the Clerk is to assure that the records are received, managed and preserved in order to assure accuracy and honesty in public records management.

The purpose of the policy manual is to describe the records management policies and procedures enacted to assure such accuracy and honesty.

The greatest concentration of rules regarding the type of court records retention and destruction schedules are established in the Ohio Rules of Superintendence of the Courts in Rule 26. Additional rules affecting records are noted in various locations of the Ohio Revised Code and the Medina County Local Rules of Court. The Ohio History Connection (fka Ohio Historical Society (OHS)) and the American National Standards Institute (ANSI) are also involved in establishing rules for court records retention and destruction.

The spreadsheets that follow are designed to aggregate the rules as they affect the records of the Medina County Clerk's Office. If you are viewing the spreadsheet on a network computer, the spreadsheet includes further links to legal authorities which are controlling.

The spreadsheet is organized by record type – Administrative Records; Civil Cases; Criminal Cases; Domestic Relations Cases; Appeals Cases; Exhibits, Depositions and Transcripts; Video Records.

Medina County Clerk of Courts

# Medina County Clerk of Court's Public Records Policy

September 20,2007

**SEPTMEBER 20, 2007**

It is in the best interest of the Medina County Clerk of Courts to consistently, ethically and legally uphold his/her duty to respond to public records requests. As such, a Public Records Policy has been developed in accordance with the Ohio Revised Code 149.43

Where questions exist regarding appropriate application of this policy, employees are to direct their questions to the Clerk of Courts or the Chief Deputy Clerk of Courts.

A copy of the Public Records policy is available upon request.

## Medina County Clerk of Court's Policy Manual

§ ORC 149.43

**NOTE:** *It is in the best interest of the Medina County Clerk of Court to consistently, ethically, and legally uphold its duty to respond to public records requests. As such, **this policy is to be strictly enforced in all but the most exceptional requests.** Where questions exist regarding appropriate application of this policy, employees are to direct their questions to the Clerk of Court or the Chief Deputy Clerk of Court.*

*"The Clerk of Court shall distribute the public records policy adopted by the Clerk of Court under division (E) (1) of this section to the employees of the Clerk of Court. The Clerk of Court shall require that employees acknowledge receipt of the copy of the public records policy. The Clerk shall create a poster that describes its public records policy and shall post the poster in a conspicuous place in the public office. The Clerk of Court may post its public records policy on the court's Internet web site.*

A. As an Ohio public office, the Clerk of Court is subject to Ohio's Public Records Act which requires the Clerk make records available for inspection upon request. In accordance with the Ohio Public Records Act, it is the policy of the Clerk to provide convenient, prompt and open access to all public records maintained by the Clerk of Court.

Therefore, this policy serves to provide Clerk of Court's employees with information regarding the Public Records Act, including the definition of what is and is not considered a public record, and to establish a procedure for responding to requests for public records.

B. A public record is generally any record kept by a public office, except those records that are otherwise exempt under Ohio's Public Records Act, the release of which are prohibited by state or federal law.

149.011(G):

*"Records" includes any document, device, or item, regardless of physical form or characteristic, including an electronic record as defined in section 1306.01 of the Revised Code, created or received by or coming under the jurisdiction of any public office of the state or its political subdivisions, which serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office."*

1306.01(G):

*“Electronic Record” means a record created, generated, sent, communicated, received, or stored by electronic means.”*

1. Examples of public records may include all or part of, but are not limited to, financial documents, personnel files, e-mail, some draft documents, and records kept in the ordinary course of business.
2. Labeling something as “*confidential*” does not automatically exclude it from being a public record. Some common exceptions to the Public Records Act include records which relate to disabilities and accommodations under the Americans with Disabilities Act, true medical records, Social Security numbers, employee home addresses, and attorney-client communications.
3. Any record created when conducting Clerk of Court business is likely to be considered a public record under the Act. As a result, all types of communication (written, verbal, and electronic) should be factual, objective, thorough, and measured in tone.
4. Documents cannot be destroyed to avoid compliance with the Public Records Act. All records should be maintained and destroyed in accordance with established records retention schedules.

#### C. Request for Public Records

1. The Clerk of Court is required to provide records to a requester within a reasonable period of time. Some requests may be so broad and ambiguous that the request cannot be fulfilled.
2. **While an individual is not required to submit a public records request in writing**, the Clerk of Court encourages the requester to submit requests in writing in an effort to prevent any misunderstanding on either part as to the records the requester is seeking.
3. Individuals requesting a public record cannot be forced to provide identification, do not have to provide a proper purpose for requesting the record, and cannot be charged for time and labor of Clerk of Court employees spent fulfilling the request.

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

*requestor's identity or the intended use of the requested public record constitutes a denial of the request". 149.43(B) (4)*

*"A public office or person responsible for public records may ask a requester to make the request in writing, may ask for the requester's identity, and may inquire about the intended use of the information requested, but may do so only after disclosing to the requester that a written request is not mandatory and that the requester may decline to reveal the requester's identity or the intended use and when a written request or disclosure of the identity or intended use would benefit the requester by enhancing the ability of the public office or person responsible for public records to identify, locate, or deliver the public records sought by the requester." 149.43(B) (5)*

4. The department/agency should not create new records to fulfill a request. For example, if information that is stored in a number of different electronic databases is requested, the Clerk of Court is not required to create a report that summarizes the information; it is only required to provide a copy of the information as it currently exists.
5. Responsibility for maintaining and producing public records according to law resides with the Clerk of Court where the records are kept to assure compliance with state law, and with the Clerk of Court's established records retention schedule.

#### D. Intake of Request Procedure

1. All public records shall be promptly prepared and made available for inspection to any person at all reasonable times during regular business hours.
2. Clerk of Court personnel may inform the requester that the request should be reasonably specific and describe what is being sought.

*"If a requester makes an ambiguous or overly broad request or has difficulty in making a request for copies or inspection of public records under this section such that the public office or the person responsible for the requested public record cannot reasonably identify what public records are being requested, the public office or the person responsible for the requested public record may deny the request but shall provide the requester with an opportunity to revise the request by informing the requester of the manner in which records are maintained by the public office and accessed in the ordinary course of the public office's or person's duties." ORC §149.43(B) (2)*

3. Under current Ohio law, a public office or person responsible for the public record shall permit that person to choose to have the public record duplicated upon paper, upon the same medium upon which the public office or person responsible for the public record keeps it, or upon any other medium upon which the public office or person responsible for the public record determines that it reasonably can be duplicated as an integral part of the normal operations of the public office or person responsible for the public record. When the person seeking the copy makes a choice under this division, the public office or person responsible for the public record shall provide a copy of it in accordance with the choice made by the person seeking the copy.
  - a. The public office or person responsible for the public record is to advise the individual requesting the public record that a timely response to their request will be provided once it can be determined that such a record exists. The Ohio Public Records Act does not require that a new public record be created in response to a request.
  - b. The requester is to be apprised of the estimated time frame to produce an existing public record thereby allowing the agency/department the opportunity to assemble and copy the requested record(s). Additionally, the requester is to be apprised that copying charges are set at a base cost of .25¢ per copy, with certain exceptions based on documented costs.
  - c. Costs of providing copies (including duplication costs, postage costs, and other costs of delivery or transmission, etc.) **may be required to be paid by requesters in advance.**
4. Public offices are not required to allow requesters to make copies themselves.
5. The Clerk of Court's office or person responsible for the public record is responsible for tracking any written public records requests received, including name of requester, if available; a summary description of records being sought; date request received; date request completed; and what records were provided or denied.
6. The Clerk of Court retains the right to limit the number of records transmitted by US Mail to ten per month, unless the requester certifies in writing to the Clerk of Court's Office that the records or information contained in them will not be used for commercial purposes (149.43(B7))

#### E. Collection and Response

1. The Clerk or Deputy Clerks must comply with the request for public records by collecting the requested public records as promptly as possible. A public record may contain information that is exempt from disclosure. If such information is redacted, **it is to be redacted from the copy, not the original.**
2. If a request is denied, in whole or in part (through redaction of certain information), the requester must be provided with an explanation of the denial – including legal authority. If the initial request was in writing, this explanation must also be in writing.

- a. ORC §149.43(B)(3):

*"If a request is ultimately denied, in part or in whole, the public office or the person responsible for the requested public record shall provide the requester with an explanation, including legal authority, setting forth why the request was denied. If the initial request was provided in writing, the explanation also shall be provided to the requester in writing."*

- b. **A denied request shall first be reviewed by the Medina County Prosecutor's Office prior to being issued to the requester.**

3. The records that have been collected to fulfill the public records request must be reviewed by the Clerk of Court or Chief Deputy Clerk of Court prior to their release to ensure fulfillment of the public records request and compliance with the Ohio Public Records Act. The collected public records should be submitted to allow sufficient time for review.
4. Upon request the appropriate public office or person responsible for public records shall transmit a copy of the public record to any person by United States mail within a reasonable period of time after receiving the request for the copy.
5. In most cases, if the request is to inspect the public records, the inspection will take place at the location where the records have been collected, ordinarily during regular business hours and under the supervision of the Clerk of Court or Deputy Clerk of Court.
6. If the request is for copies, the Clerk of Court or Deputy Clerk of Court will make arrangements for any copying of the requested public records at the rate described in Section D.3.b. of this policy. Any fees received should be remitted to the Clerk of Court's Office.
7. The Medina County Prosecutor is available throughout the process to provide legal advice to the Clerk of Court staff to ensure compliance with state and federal law.

F. The following descriptions of certain terms used in this policy are intended to provide guidance in understanding the policy, but are not comprehensive or definitive. These terms are subject to legislative revision and judicial interpretation. Generally, records exempt from the Public Records Act include:

1. **Medical records** - any documents pertaining to the medical history, diagnosis, prognosis, or medical condition of an individual.
2. **Investigatory records** - applies primarily to confidential law enforcement investigatory records of a police/sheriff's department, but also includes some records of administrative investigation, e.g. claims of harassment, discrimination, and theft.
3. **Trade secret and intellectual property records** - most research-related information, other than financial or administrative data, that has not previously been publicly released, published, or patented.
4. **Other exemptions as referenced in 149.43.**