

# SCIOTO COUNTY BOARD OF DEVELOPMENTAL DISABILITIES

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## POLICY 2.04 PUBLIC RECORDS

### I. Introduction

Pursuant to Section 149.43 of the Ohio Revised Code, it is the policy of this agency to adhere to the state's Public Records Act which imposes two primary obligations on public offices:

- A. To provide prompt inspection of all public records responsive to a request; and
- B. To provide copies of all public records responsive to a request within a reasonable period of time.

### II. Definitions

- A. Records: Any document, device or item, regardless of physical form or characteristic, including an electronic record as defined in ORC Section 1306.01 that meets the following criteria:
  1. Is created or received by, or comes under the jurisdiction of the public office; and
  2. Documents the organization, functions, policies, decisions, procedures, operations, or other activities of the office.
- B. Public Records: Records kept by any public office which are not specifically exempted from disclosure by state or federal law. Some information or records are excluded from mandatory release due to their confidential nature. For instance, records regarding individuals with a developmental disability, who are eligible for services from or who are served by the County Board, are not public records and will be disclosed only in accordance with state and federal law. (Ref.: ORC 5216.044)

### III. Recordkeeping

It is the policy of this agency that, as required by Ohio law, records will be organized and maintained so that they are readily available for inspection and copying. (See also a later section of this policy specific to e-mail). Record retention schedules will be updated periodically and posted prominently at the County Board's administration offices and in the main office of County Board occupied buildings.

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An electronic record is deemed to exist so long as a computer is already programmed to produce the record through the office's standard use of sorting, filtering, or querying features.

## IV. Record Requests

- A. No specific language is required to make a request for public records. The requester does not have to put a records request in writing, and does not have to provide his or her identity or the intended use of the requested records.

However, the law does permit the public office to ask for this information and/or a written request, but only if:

1. The requester is told first that a written request is not required and that the requester may decline to reveal his/her identity and intended use; and
  2. A written request or disclosure of identity or intended use would benefit the requester by enhancing the office's ability to identify, locate or deliver the public records that have been requested.
- B. A requester must identify the records requested with sufficient clarity to allow the County Board to identify, retrieve, and review the records. If it is not clear what records are being sought, the County Board may initially deny a request. However, the requester will be provide an opportunity to revise the request after being informed of the manner in which the records are maintained and accessed in the ordinary course of the County Board's business.
- C. Public records will be available for inspection during regular business hours, with the exception of published holidays. The County Board's regular business hours are 8:00 AM to 4:00 PM and public records requests should be directed to the Superintendent's Office.
- D. Public records will be made available for inspection promptly. An SCBDD employee will be present the entire time records are being inspected by a member of the public to ensure that records are not damaged, altered or removed.

Copies of public records will be made within a reasonable period of time.

"Promptly" and "reasonable" take into account, among other things, the volume of records requested; where and how the records are stored; and the

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necessity for any legal review of the records before they are inspected or copied.

- E. A person requesting a copy of a public record may choose the format of the records they will receive and the method of delivery. Copies will be made available at cost.
- F. Under no circumstances will a requester be allowed to copy records him/herself by any means. This measure is to maintain the integrity of the original records.
- G. The County Board will keep a log of all public record requests, including how and when the request was fulfilled or denied.
- H. A request by a defendant, counsel of a defendant or any agent of a defendant in a criminal action that public records be made available under ORC 149.43 shall be considered a demand for discovery pursuant to the Criminal Rules, except to the extent that the Criminal Rules plainly indicate a contrary intent. Such requests should come to the Superintendent through a legal officer responsible for prosecuting the action.

## **V. Costs for Copies of Public Records on Various Mediums**

If the requester wants to obtain a copy of a public record, the County Board shall permit the requester to choose the medium on which the record will be duplicated: on paper, upon the same medium upon which the record is kept, or any other medium upon which the record can be duplicated reasonably as an integral part of the normal operations of the County Board.

Those seeking public records will be charged only the actual cost of the copies. This shall not include the public employee's time in responding to the request.

- A. The charge for paper copies is \$0.10 per page and payment may be required in advance.
- B. The charge for a copy on electronic media will be the actual cost of the device and must be paid in advance. Devices supplied by requesters can only be used if they are in the original, unopened packaging and are compatible with the Board's current hardware and software.
- C. There is no charge for documents to be emailed. (If possible, these documents will be sent in a format that does not allow for easy alteration.)

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- D. Requesters who ask that records be mailed to them will be charged the actual cost of the copies or whatever electronic media is agreed upon, plus the actual cost of the postage and mailing supplies in advance of mailing.

## **VI. Denial of Public Record Requests**

- A. If a requester makes an ambiguous or overly broad request or has difficulty in making a request for copies or inspection of public records such that the County Board cannot reasonably identify what public records are being requested, the County Board may deny the request.

However, the requester shall be provided with an opportunity to revise the request after being informed of the manner in which records are maintained in the ordinary course of business.

- B. If the County Board receives a request for a record that it does not maintain or the request is for a record which is no longer maintained, the requester shall be so notified in writing.
- C. In the event a request is made to inspect or obtain a copy of a record maintained by the County Board whose release may be prohibited or exempted by either state or federal law, the request may be forwarded to the Scioto County Prosecutor for research and/or review. The requester shall be advised that his/her request is being reviewed by the county prosecutor to ensure that protected exempted information is not improperly released.
- D. Some records may be released only after certain information has been redacted. Redaction means 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 public record.
- E. If a request is ultimately denied, in whole or in part, the County Board shall provide the requester with an explanation as to why the request was denied or information was redacted. The denial will be in writing and include legal references.

## **VII. E-mail and Social Media as Public Records**

Electronic records are defined by the Ohio Revised Code when their content relates to the business of the County Board. Electronic records are to be treated in the same fashion as records in other formats and will follow the same retention schedules.

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- A. Records in private e-mail and social media accounts that are used to conduct public business are subject to disclosure, and all employees or representatives of the County Board are instructed to retain their transmissions from private accounts that relate to public business (see definition of public records) and copy them to their business computer and/or print them for filing.
- B. Employees in charge of maintaining records will treat e-mails from private accounts as records of the County Board, will file them appropriately, will retain them pursuant to established schedules and will make them available for inspection and copying in accordance with this policy and the Public Records Act.

## **VIII. Failure to Respond to a Public Records Request**

If a requester feels he/she has been improperly denied public records, the requester shall be advised that he/she may contact the Ohio Attorney General's Office and its public records unit to request use of a free mediation program designed to help resolve disputes between public offices and record requesters. Or he/she may do one of the following, but not both:

- A. File a complaint with the clerk of courts of claims or the clerk of the court of common pleas under ORC 2743.75; or
- B. Commence a mandamus action to obtain a judgment that orders the public office or person responsible for the public records, comply. The mandamus action may be commenced in the county's court of common pleas, the Ohio Supreme Court or in the court of appeals for this appellate district.

## **IX. Disclaimer**

Notwithstanding the existence of this policy, the County Board hereby informs the public that it shall comply with the requirements of the Ohio Public Records Act, including but not limited to, Section 149.43 of the Ohio Revised Code and that the provisions of the Ohio Public Records Act, and any amendments thereto, supersede and take precedence over this policy. The Board retains the right to amend this policy at any time in accordance with the Ohio Public Records Act or other applicable state or federal law.