

# CSC Update

State Personnel Board of Review

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## Budget, Personnel Cuts Force Publication Schedule Change

Due to recent cuts in agency funding, it has become necessary for SPBR to amend the CSC Update's publication schedule and distribution method.

Beginning with this issue, the CSC Update will be published only in electronic format. To be notified by email when a new issue is released, contact SPBR with your email address to be added to the notification list. Please contact CSC Coordinator Elaine Stevenson, at 614-466-7046, or email her at [elaine.stevenson@spbr.state.oh.us](mailto:elaine.stevenson@spbr.state.oh.us)

The Board hopes to be able to resume publication of the CSC Update in printed form should funds become available at a future date.



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## Online Resources Available 24/7 for CSC Members

Have a civil service question and you need the answer RIGHT NOW? Head to SPBR's website anytime, day or night, at [www.state.oh.us/pbr/](http://www.state.oh.us/pbr/) and follow the navigational links to the Resources section. You can view and download available resource materials such as SPBR's Hearing Procedures Manual and Guidelines for Conducting Employee Hearings, and find online copies of past and present issues of CSC Update.

The Guidelines for Conducting Employee Hearings manual covers the hearing process from the initial receipt of an employee's appeal through possible appeal of the CSC's decision to a reviewing court. It includes sections dealing with jurisdiction, practices and procedures, disciplinary and non-disciplinary hearings, and judicial review under Ohio Revised Code Chapter 2506., as well as quick reference lists, selected sections of the Revised Code and Ohio Administrative Code, and a reference copy of a Revised Code Section 124.34 Order.

Back issues of CSC Update contain a variety of articles related to issues that frequently present questions for civil service commissions, including employment testing, veterans preference points, records retention, home rule, political activity and collective bargaining.

If you don't find the answers you're looking for, feel free to call SPBR at 614-466-7046 for personalized assistance.



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# Public Records Requests for Personnel Files: The Duties and Responsibilities of Public Offices

*Elaine Stevenson, State Personnel Board of Review*

What is the Public Records Act? What is the Personal Information Systems Act? Is a personnel file considered a public record? What information that may be found in a personnel file would not be considered public record? What duties and responsibilities does a public entity have when presented with a public records request for a personnel file?

## **The Public Records Act**

In order to provide citizens with the tools to obtain knowledge on the workings of their government, the federal government enacted the Freedom of Information Act, which provides that any person may access federal public records. At the state level, many states, including Ohio, have enacted similar legislation providing citizens with access to state public records. Chapter 149. of the Ohio Revised Code provides Ohio's citizens, as well as citizens of other states, with the ability to access Ohio's public records.



Pursuant to R.C. 149.43(B)(1), public offices are required to keep their records open for public inspection and copying. All public records shall be promptly prepared and made available for inspection to any person at all reasonable times during regular business hours. Upon request, a public office or person responsible for public record shall make copies available at cost, within a reasonable period of time.

According to R.C. 149.011(G), “records” include any document, device, or item, regardless of physical form or characteristic, 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. For example, a personnel action, such as a suspension, documents a decision of the public office and therefore would be considered a public record pursuant to R.C. 149.011(G). R.C. 149.011 provides other essential definitions necessary to understanding Ohio's Public Records Act. For instance, a public office is defined as any Ohio statutory entity that exercises any function of state government; a state agency includes every department, bureau, board, commission, office or other organized body established for the exercise of any function of state government.

R.C. 149.43(A)(1) defines a “public record” as any record that is kept by any public office; R.C. 149.43(A) also sets forth a non-exhaustive list of documents that do not constitute public records within the meaning of the Public Records Act. The following are some examples of items that are not considered public records: medical records, probation and parole proceedings records, adoption proceedings records, putative father registry records, donor profile records, trial preparation records, confidential law enforcement investigatory records, and intellectual property records. R.C. 149.43(V) contains an exception which provides that records are not subject to public disclosure under the Public Records Act if their release is prohibited by other state or federal laws.

## **The Personal Information Systems Act**

In 1977, Ohio's legislature enacted the Personal Information Systems Act (PISA). PISA, as codified in Chapter 1347 of the Ohio Revised Code, is designed to work in concert with the Public Records Act to allow public access to public records while protecting Ohio's citizens from unwanted disclosure of confidential information contained in a personal information system that is maintained by a state or local agency.

Generally, Chapter 1347. of the Revised Code mandates that state and local government agencies that maintain a personal information system do the following: use personal information in a way that is consistent with the purposes of the personal information system; establish reasonable procedures to protect this information from improper use or disclosure; and establish procedures of monitoring the accuracy and relevancy of the records. PISA also permits individuals to inspect records about themselves, and provides that an individual may dispute inaccurate information. PISA prohibits the improper use of personal information by a government agency. Pursuant to R.C. 1347.04(B), however, the provisions of Chapter 1347. of the Revised Code are not to be construed to prohibit the release of public records, or the disclosure of personal information if such information is a public record pursuant to R.C. 149.43(B)(1).

R.C. 1347.01(E) states that personal information means any information that describes anything about a person, or that indicates actions done by or to a person, or that indicates that a person possesses certain personal characteristics, and that contains, and can be retrieved from a system by a name, identifying number, symbol or other identifier assigned to a person. R.C. 1347.01(F) states that system means any collection or group of related records that are kept in an organized manner and that are maintained by a state or local agency, and from which personal information is retrieved by the name, identifying number, symbol or other identifier assigned to the person. R.C. 1347.04(A)(1), provides exemptions from the provisions of this chapter, including the criminal courts and prosecutors.

### **Case Law**

The public has a right to know certain information about its employees, such as name, work address, salary, job classification and title, job performance. (See R.C. 124.09(C), R.C. 149.43(B)(1)). However, a public employee also has the right to non-disclosure of personal or confidential information contained in his or her personnel file. In applying the Public Records Act to public record requests involving personnel files of governmental employees, the Ohio Supreme Court has balanced the public's interest in accessing public records against the employee's interest in protecting his or her privacy.



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*The CSC Update is provided by the State Personnel Board of Review to raise awareness regarding issues related to Ohio civil service law. The contents of this newsletter should not be considered legal advice. Readers are encouraged to contact SPBR at 614/466-7046 for specific questions.*

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In *State ex rel. Fant v. Enright* (1993), 66 Ohio St.3d 186, Appellant made a public records request of the Clerk of Courts of Franklin County to inspect the personnel file of the former Franklin County Deputy Clerk. The Clerk of Courts refused to release the requested personnel file for inspection; Appellant filed a complaint for a writ of mandamus to compel release of the personnel file. The lower court denied the writ. On appeal, the Ohio Supreme Court emphasized that an item contained in a personnel file is a public record only when it is kept by a public office and serves to document the organization, functions, policies, decisions, procedures, operations or other activities of the office. The Court observed that not all information contained in a personnel file would be considered a public record and that, pursuant to R.C. 1347.01(E), a public office has an affirmative duty to protect from disclosure personal or confidential information contained in a personnel file. Accordingly, the personal or confidential information must be redacted or removed from the personnel file prior to inspection and/or copying. (See, also Sunshine Laws Update (May 2001), Attorney General Betty D. Montgomery; Sunshine Law An Update, Public Practice Continuing Legal Education (November 2001), Attorney General Betty D. Montgomery – advises keeping confidential files in a separate drawer, file cabinet or office to reduce the possibility of someone reviewing an inappropriate file.)

In *State ex rel. Beacon Journal Publishing Co. v. City of Akron* (1994), 70 Ohio St.3d 605, the Court considered whether a public employee's social security number provides insight into the workings of a public office. The Court opined that a public employee's social security number would not reveal the workings of the public office; however, the potential for harm to the individual through fraudulent use of his or her social security number was significant.

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Specifically, because information technology has advanced to such a degree, individuals face the possibility that they will become the victim of identity theft, which could result in personal financial ruin. Utilizing the R.C. 149.43(V) provision of the Public Records Act, the Ohio Supreme Court specifically exempted social security numbers from public disclosure based on a federal right to privacy and expectation of privacy in one's social security number based on the Privacy Act of 1974. (See U.S.C. 552a)

In *State ex rel. Keller v. Cox* (1999), 85 Ohio St.3d 279, an attorney representing a criminal defendant sought a writ of mandamus to compel county officials to allow the attorney to inspect personnel records of a county detective who was scheduled to testify against the attorney's client in a criminal prosecution. The Ohio Court of Appeals granted the sheriff's motion to dismiss for failure to state a claim. The Ohio Supreme Court ruled that the requested records are exempt because they are protected by the constitutional right of privacy. The Court noted that records that may be of assistance in a criminal trial, such as discipline, public complaints, or job performance, are obtainable through internal affairs files.

In its analysis of the relevant case law, the Ohio Attorney General has concluded that both the United States Supreme Court and the Ohio Supreme Court have suggested that the appropriate test when considering what information in an employee personnel file should not be disclosed is whether the items of information sought would cast any light on the conduct of any governmental agency or official. "If the response would not shed any light on the conduct of the governmental agency and the request seeks no official information about a government agency, but merely records what the government happens to be storing, the invasion of privacy is not warranted." (Sunshine Law An Update, Public Practice Continuing Legal Education (November 2001), Attorney General Betty D. Montgomery). The following are some examples of items often kept in personnel files that are not considered public records: disability leave information, workers' compensation injury reports, defendant and beneficiary information, information regarding legal actions, EEO information, workplace violence incident reports, voluntary payroll deductions, I-9 immigration and naturalization records. Id.

Lastly, it should be noted that in addition to personnel records required to be kept by state law (R.C. 149.40), certain federal laws also require that personnel records be maintained. Some of these records required to be maintained under federal law may be considered confidential information and, therefore, should not be disclosed pursuant to a public records request. For instance, the Immigration Reform and Control Act requires employers to keep I-9 immigration and naturalization records; however, I-9 records are also confidential information and, thus, would not be considered a public record. (See Sunshine Law Update (May 2001), Attorney General Betty D. Montgomery).

## ***Summary***

Although certain items of information commonly stored in a personnel file are public records, not all items kept in a personnel file meet the definition of public record pursuant to R.C. 149.03. Information in a personnel file, such as personnel actions, employee history, performance appraisals, and attendance records, are considered public records and the agency has a duty to release these items upon a public records request. Conversely, an agency has the duty not to disclose other information in a personnel file that is considered confidential, such as social security numbers and pre-employment investigations. Each agency has the discretion to determine the methods it will utilize to protect confidential information, such as redacting or removing confidential information prior to release, or keeping confidential information in a separate file and location. Hopefully, this article will answer some questions you may have had on the topic of public record requests for personnel files. SPBR welcomes your comments and questions and also encourages you to contact the Office of the Attorney General – an excellent resource for comprehensive, up-to-date information regarding Ohio's Sunshine Law.

## **Annual Reports Due**

Pursuant to Ohio Revised Code Section 124.40, each municipal civil service commission is required to submit a yearly report of its activities to the State Personnel Board of Review. Please complete the Report of Activities form mailed to your commission earlier this year and return it, along with your annual report and a copy of your commission's civil service rules, to the State Personnel Board of Review, 65 East State Street, 12th Floor, Columbus, OH 43215.

If you need to request another Report of Activities form or have any questions regarding annual filing requirements, please contact Elaine Stevenson at 614/466-7046. A copy of the Annual Report form is also available on the SPBR website.