

# FRANKLIN COUNTY PROSECUTING ATTORNEY



# PUBLIC RECORDS POLICY

Adopted by Franklin County Prosecuting Attorney  
G. Gary Tyack

Effective March 2, 2021

**Franklin County Prosecuting Attorney Public Records Policy**  
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## **Introduction**

The Franklin County Prosecutor's Office acknowledges that it maintains many records that are used in the administration and operation of the Prosecutor's Office. The following Public Records Policy is adopted by the Franklin County Prosecuting Attorney in accordance with the applicable provisions of Ohio Revised Code Chapter 149, the Ohio Public Records Act, State and Federal laws. This policy is not intended to be legal advice.

This Public Records Policy is intended to be utilized in conjunction with the Records Retention Schedule currently in effect for the Franklin County Prosecuting Attorney's Office, as supplemented by the Administrative Rules promulgated by the Franklin County Records Commission, and approved by the Ohio Historical Society and the Ohio Auditor of State, which are attached hereto.

The Public Records Act imposes two primary obligations upon this office:

- Provide prompt inspection of public records; and
- Provide copies of public records within a reasonable period of time.

These obligations provide the public with two primary rights:

- The right to prompt inspection of public records; and
- The right to copies of public records within a reasonable period of time.

This Public Records Policy shall be effective March 2, 2021, and shall apply to all public records requests that are received by the Office of the Franklin County Prosecuting Attorney on or after March 2, 2021.

In accordance with Ohio law, this policy shall be distributed to the employees of the Franklin County Prosecutor that have custody of the records of the Franklin County Prosecutor. These employees shall acknowledge receipt of a copy of this public records policy. This policy shall also be included in the policies and procedures handbook of the Franklin County Prosecutor.

A record can be on paper or microfilm, electronic on your computer or in a database, accessed through your website, or on a hand-held device such as a cell phone or Blackberry. Basically anything created, received, stored or maintained on or in county-owned equipment or supplies can be considered a public record. Records include files, letters, reports and memos as well as emails, text messages, phone logs, and phone messages. Keep in mind that if you conduct County business on your personal phone or computer, those records could also be considered to be public. This is further explained in this policy.

Public records should be maintained in a manner that provides for prompt inspection and copying within a reasonable amount of time during the agency's regular business hours. The civil division in the Franklin County Prosecutor's Office will advise you as to what records might be considered confidential. Additionally, no public records should ever be destroyed without following approved procedures, including completing the proper form documenting public record destruction.

There are a few specific exceptions in public record laws, and employees are not expected to know every exception to the definition of a public record. If you are presented with a public records request and are unsure how to proceed, refer the matter to the civil division in the Franklin County Prosecutor's office.

These concepts are further explained in this policy.

Openness leads to a better informed citizenry, which leads to better government and better policy. It is the mission and intent of The Franklin County Prosecutor's Office to at all times fully comply with and abide by the Ohio Public Records Act. This is a means to provide trust between the public and the Prosecutor's Office.

## **SECTION 1. RECORDS DEFINED**

“Public Records” are a “record that is kept by this office at the time of a public records request is made, subject to applicable exemptions from disclosure under Ohio or federal law. All public records must be organized and maintained in a way that the records can be made available for inspection and copying.

“Records” include (1) any document, device, or item, regardless of physical form or characteristic, including notes, drafts and an electronic record as defined in section 1306.01 of the Ohio Revised Code, (2) created or received by or coming under the jurisdiction of the Franklin County Prosecutor’s Office that (3) documents the organization, functions, policies, decisions, procedures, operations, or other activities of the office.

“Non-Records” are documents or other items that do not meet the three (3) parts of the definition of a “record;” such documents or other items are a non-record and are not subject to the Public Records Act or records retention requirements.

### **Section 1.1. Electronic Records**

Records in the form of email, text messages, and instant messaging, including those sent and received via a hand-held communication device, are to be treated in the same manner as records in other formats.

The Franklin County Prosecutor’s Office must analyze an email message like any other item to determine if it meets the definition of a record. Emails containing information stored on a fixed medium; if it’s received by, created by or comes under the jurisdiction of this office (its status as a record depends on the content of the message); if the message documents the organization, functions, policies, decisions, procedures, operations, or other activities of this office, it is defined as a record.

Electronic communications of employees to or from private email accounts that otherwise meet the definition of a record, are subject to the Public Records Act. The location from which the item is sent does not change its status as a record.

All employees of the Franklin County Prosecutor’s Office must retain their email records and other electronic records in accordance with the applicable retention schedule.

### **Section 1.2. Notes**

Employee notes have been found not to be public records if they are:

- Kept as personal papers, not personal records;

- Kept for the employee's own convenience;
- Other employees did not use or have access to the notes;
- Once shared in any manner, the notes no longer are considered personal notes.

Personal notes do not meet the third part of the definition of a record because they do not document the activities of the office and do not need to be retained as records because information will not be lost to the public.

### **Section 1.3. Drafts**

If a draft document is kept by the office and meets the three-part definition of a record, it is subject to the Public Records Act and records retention law. The records retention schedule addresses the length of time it must be kept.

### **Section 1.4. Electronic Database**

A database is an organized collection of data. The Public Records Act does not require an office to search a database for information and compile or summarize it to create a new record. If the office already uses a computer program to perform the search and produce the compilation or summary described by the requester, the output exists as a record.

### **Section 1.5. Public Office Defined**

"Public office" includes any state agency, public institution, political subdivision, or other organized body, office, agency, institution, or entity established by the laws of this state for the exercise of any function of government. "Public office" does not include the nonprofit corporation formed under section 187.01 of the Ohio Revised Code.

## **SECTION 2. REQUESTING PUBLIC RECORDS**

Any person can make a request for public records by asking the office or person responsible for the records for specific, existing records. The requester may make the request in any manner: by phone, in person, or in an email or letter. The Franklin County Prosecutor's Office cannot require the requester to identify him or herself or indicate why the request is being made, unless specific law requires it. Discussion about the purpose or interest in certain information can aid the office in locating and producing the records more efficiently.

The requester must identify the records they are seeking with reasonable clarity so that the office can identify responsive records based on the manner in which it ordinarily maintains and accesses the public records. The request must fairly and specifically describe what they are seeking. The requester does not need to specifically state they are requesting public records if the Franklin County Prosecutor's Office is able to ascertain by the communication the request is a public records request.

## **Section 2.1. Ambiguous or Overly Broad Requests**

An ambiguous request is one that lacks the clarity the office needs to ascertain what the requester is seeking and where to look for records that might be responsive or the wording of the request is vague or subject to interpretation.

A request can be overly broad when it is so inclusive that the office is unable to identify the records sought based on the manner in which the office organizes and accesses records. *See State ex rel. Zidonis v. Columbus State Community College*, 133 Ohio St.3d 122, 2012-Ohio-4228. The Ohio Supreme Court has repeatedly stated the burden is on the requester to identify the records sought “with reasonable clarity.”

## **Section 3. PUBLIC RECORD REQUESTS BY CERTAIN REQUESTERS**

### **Section 3.1. Inmates**

Prison inmates may request public records, but they must follow a statutorily-mandated process if requesting records concerning any criminal investigation, prosecution, juvenile investigation that otherwise would be a criminal investigation or prosecution if the subject were an adult. The inmate must first obtain a finding from a judge (or judge’s successor) who sentenced or otherwise adjudicated their case that the information sought is necessary to support a justiciable claim.

### **Section 3.2. Commercial Requesters**

Unless specified otherwise, it is irrelevant whether the intended use of the requested records is for commercial purposes. However, if an individual or entity is making public record requests for commercial purposes, the office may limit the number of records “that the office will physically deliver of United States mail or by another delivery service to ten (10) per month.”

### **Section 3.3. Journalists**

There are several statutes that grant journalists enhanced access to certain records that are not available to other requesters. This enhanced access may be conditioned on the journalist providing information or representations not normally required by a requester. To obtain this information, the journalist must:

- Make the request in writing and sign the request;
- Identify themselves by name, title, and employer’s name and address; and
- State that disclosure of this information sought would be in the public interest.

#### **SECTION 4. EXEMPTIONS**

The Public Records Act, various statutes throughout the Ohio Revised Code and the Ohio General Assembly, have identified items and information that are either removed from the definition of public record or are otherwise permitted to be withheld.

The following represents a **partial** list of records maintained by this office that may not be inspected or copied:

Medical records  
Probation/Parole/Post release control  
Trial preparation  
Confidential law enforcement investigatory records  
Mediation  
DNA  
Inmate records  
Department of Youth Services  
Recreational activities of minors  
Death of minor  
Juvenile Court records  
Foster care / child care centers  
Lethal injection  
Identifying information of uncharged suspects (unless name of uncharged suspect is listed on an official law enforcement incident report)  
Personal information – including but not limited to: Social Security numbers; state or federal tax identification number; driver's license number or state identification number; financial or medical account numbers  
Minors involved in school vehicle accidents  
Depictions of victims of sexually oriented offenses  
Contact information for victims and witnesses  
Coroner records exempted pursuant to section 313.10 of the Ohio Revised Code  
Photos of a deceased person will be examined on a case by case basis  
Restricted portions of a body-worn camera or dashboard camera that the recording shows, communicates, or discloses any of the following:

- The image or identity of a child or information that could lead to the identification of a child who is the primary subject of the recording;
- The death of a person or deceased person's body, unless the death was caused by a peace officer or under certain other circumstances;
- The death of a peace officer or first responder that occurs when the decedent was performing official duties;
- Grievous bodily harm unless the injury was effected by a peace officer;



- An act of severe violence against a person that results in serious physical harm unless the injury was effected by a peace officer;
- Grievous bodily harm to, or an act of severe violence resulting in serious physical harm, against a peace officer or first responder while the injured person was performing official duties;
- A person's nude body;
- Protected health information, the identity of a person in a health care facility who is not the subject of a law enforcement encounter, or any other information in a health care facility that could identify a person who is not the subject of a law enforcement encounter;
- Information that could identify the alleged victim of a sex offense, menacing by stalking or domestic violence;
- Information that does not qualify as a confidential law enforcement investigatory record that could identify a confidential source if disclosure of the source or the information provided could reasonably be expected to threaten or endanger a person's safety or property;
- A person's personal information who is not arrested, charged or issued a written warning;
- Proprietary police contingency plans or tactics that are intended to prevent crime and maintain public order and safety;
- Personal conversations between peace officers unrelated to work;
- Conversations between peace officers and members of the public that do not concern law enforcement activities;
- The interior of a residence unless it is the location of an adversarial encounter with, or use of force by, a peace officer; or the interior of a private business not open to the public unless it is the location of an adversarial encounter with, or use of force by, a peace officer;
- Restricted portions of camera recordings depicting death, grievous bodily harm, acts of severe violence resulting in serious physical harm, and nudity may be released with the consent of the decedent's executor or administrator or the person's guardian if the recording will not be used in connection with any probably or pending criminal proceeding or the recording has been used in connection with a criminal proceeding that was dismissed or for which a judgment has been entered pursuant to Rule 32 of the Rules of Criminal

Procedure, and will not be used again in connection with any probably or pending criminal procedure.

If a person has been denied access to a restricted portion of a body-worn camera or dashboard camera recording, that person may file a mandamus action or a complaint with the clerk of the Court of Claims, seeking an order to release the recording. The court shall order the release of the recording if it determines that the public interest in the recording substantially outweighs privacy and other interests asserted to deny release.

## **SECTION 5. RESPONSES TO PUBLIC RECORD REQUESTS**

Upon receiving a request for specific, existing public records, the office must provide prompt inspection at no cost during regular business hours, or provide copies at cost within a reasonable period of time. The office may withhold or redact records if they are covered by an exemption to the Public Records Act, but such withholding or redaction must be accompanied with an explanation, including the legal authority for each denial.

The regular business hours for the office are 8:00 a.m. to 5:00 p.m. Monday through Friday, except holidays.

It is the goal of the Franklin County Prosecutor's Office that all requests made for public records be acknowledged in writing or, if feasible, satisfied within a reasonable amount of time. Most requests should be satisfied within five (5) business days following the receipt of the request, but may be longer due to the location of the records, amount of redactions and conversion of the medium the record is stored on. If the request requires legal review, the time period will be extended. All responses will include the Franklin County Prosecutor's Office response form.

## **SECTION 6. DENYING A PUBLIC RECORD OR REDACTION**

Withholding of an entire record and the redaction of any part of a record are considered a denial of the request to inspect or copy that particular item. Any requirement by the office that the requester disclose their identity or the intended use of the requested records also constitutes a denial of the request. Employees of this office should consult with the Franklin County Prosecutor or a First Assistant Prosecuting Attorney if the employee is unsure if the record is exempted from disclosure.

### **SECTION 6.1 Redaction**

Redaction means obscuring or deleting any information that is exempt from the duty to permit public inspection or copying of items that otherwise meet the definition of a record. For records on paper, redaction shall be the blacking or whiting out of non-public information in an otherwise public document. The office may redact audio, video and other electronic records by processes that obscure or delete the specific content.

The office shall make available all the information within the public record that is not exempt and shall only redact the part of the record subject to an exemption.

The office may withhold an entire record when exempted information is “inextricably intertwined” with the entire content of the record such that redaction cannot protect the exempted information or material.

### **SECTION 6.2 Denying Ambiguous or Overly Broad Requests**

Ohio Revised Code 149.43(B)(2) permits the office to deny any part of a public records request that is ambiguous or overly broad as defined. The requestor shall be given the opportunity to revise the denied request, after being informed how the office maintains and accesses records. The Franklin County Prosecutor’s Office promotes cooperation in order for the requestor to submit a successful revised request.

### **SECTION 6.3 Duty to Notify Redactions and Withholding of Records**

The Franklin County Prosecutor’s Office must either notify the requester of any redaction or make the redaction plainly visible. If the office denies a request in part or whole, we must provide the requester with an explanation, including legal authority setting forth why the request was denied. If the requester made the initial request in writing, then the explanation for denial must be in writing.

### **SECTION 7. PUBLIC RECORDS NOT MAINTAINED BY THE FRANKLIN COUNTY PROSECUTOR’S OFFICE**

A request for a public record that this office does not maintain or is no longer maintained, the requester shall be notified in writing that one of the following applies:

The requested record involves records that are not maintained by the Franklin County Prosecutor’s Office and if possible, direct the requester to the appropriate office.

The requested record is no longer retained by the office and has been disposed of or transferred according to the Record Retention Schedule.

### **SECTION 8. REQUESTER TO CHOOSE MEDIA OF RECORDS**

The requester may specify whether they want to inspect the records or obtain copies. If the requester asks for copies, they have the right to choose the copy medium: paper, film, electronic file, etc. The requestor can choose to have the record copied on: (1) on paper, (2) in the same medium as the office keeps them, or (3) on any medium upon which the office determines the record “reasonably can be duplicated as an integral part of the normal operations of the office.”

**SECTION 9. REQUESTER TO CHOOSE DELIVERY METHOD**

The requester may personally pick up the requested copies in person or send a designee. Upon request, the office must transmit copies of the public records via the U.S. Mail or by other means of delivery or transmission at the choice of the requester.

**SECTION 10. COSTS OF RECORDS**

The Franklin County Prosecutor's Office may charge costs for copies and/or delivery or transmission, and may require payment of costs in advance. "At cost" includes the actual cost of making copies, packaging, postage, and other costs of the method of delivery or transmission chosen by the requester. The cost of employees time cannot be included in the costs of copies or of delivery.

**SECTION 10.1. Payment in Advance**

The Franklin County Prosecutor's Office may require prepayment of postage or actual delivery costs, as well as the actual cost of supplies in mailing, delivery or transmission.

Costs shall be charged according to the Fee Schedule.

**SECTION 10.2. Right to Employ Private Contractor**

The office may choose to employ the services, and charge the requester the costs, of a private contractor to copy public records as long as the decision to do so is reasonable.

**SECTION 11. FAILURE TO RESPOND TO REQUEST**

Failure to properly respond to a public records request in a timely and reasonable manner may lead to legal ramifications for the Franklin County Prosecutor's Office.

If a requester believes they have been improperly denied a request to inspect or access public records from this office, the requester may:

- Contact a First Assistant Prosecuting Attorney or designee
- Contact the Franklin County Prosecutor

AUTHORIZED BY:

A handwritten signature in black ink that reads "G Gary Tyack". The signature is written in a cursive style with a large, stylized initial "G".

---

G. Gary Tyack  
Franklin County Prosecuting Attorney

**Attachments:**

**Public Records Request Form**

**Public Records Request Response Form**

**Employee Acknowledgment of Receipt of the Public Records Policy**

**Public Records Request**

Date \_\_\_\_\_

Defendant's Full Name: \_\_\_\_\_

Case  
Number(s): \_\_\_\_\_

How may we contact you when records are ready? Please provide your email, mailing address and/or phone number: (Optional)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The information contained on this form is solely intended to enhance our ability to respond to your request in a thorough and timely manner. Completing the form will help in contacting you if there is a question about your request, and to let you know when your request is complete.

**NOTE: You are not required to request records in writing to make a public records request or to list your name or address etc.(O.R.C. 149.43 (B)(5)).**

# Public Records Request Response Form

(FORM PR-1)

Thank you for your recent public records request. The Franklin County Prosecutor's Office will respond in accordance with the applicable provisions of the Ohio Public Records Act.

On \_\_\_\_\_, you requested the following records/ information:

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**The record / information requested:**

**Legal Authority Cited**  
(if applicable)

Is not maintained by this office  
*(office will attempt to direct requester to correct office)*

Is overly ambiguous *(despite efforts to clarify)*.

ORC 149.43 (B)(2)

Does not exist and/or no obligation to create.

ORC 149.40

Has been disposed pursuant to One Time Records Disposal or pursuant to Retention Schedule.

\_\_\_\_\_

Is not subject to release in its entirety

\_\_\_\_\_

Is subject to release, however the following redactions have been made to protect exempted information  
(ORC 149.43 (B)(1)-(3)):

\_\_\_\_\_

**Redaction**

**Legal Authority Cited**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Prepared by: \_\_\_\_\_

Date: \_\_\_\_\_

If applicable, legal review by: \_\_\_\_\_

Date: \_\_\_\_\_

# **Employee Acknowledgement of Receipt Of the Public Records Policy**

(FORM EA-1)

I acknowledge receipt of the Public Records Policy dated March 2, 2021 of the Franklin County Prosecuting Attorney. I understand that the Franklin County Prosecuting Attorney reserves the right to change the policies and procedures set forth in the Public Records Policy at any time, either with or without notice, and that the changes can be made either in writing or orally.

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Print Name

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Employee's Signature

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Date

**This document shall be made part of the employees personnel file as well as the Franklin County Prosecutor's Public Records Electronic File.**