

Ohio Public Records and Records Retention

What you NEED to know

**Presented by Aaron Violand and Bennet
Stuffel**

**Stark County Prosecutor's Office - Civil
Division**

Assistant Prosecuting Attorneys

2024 Governmental Law Seminar

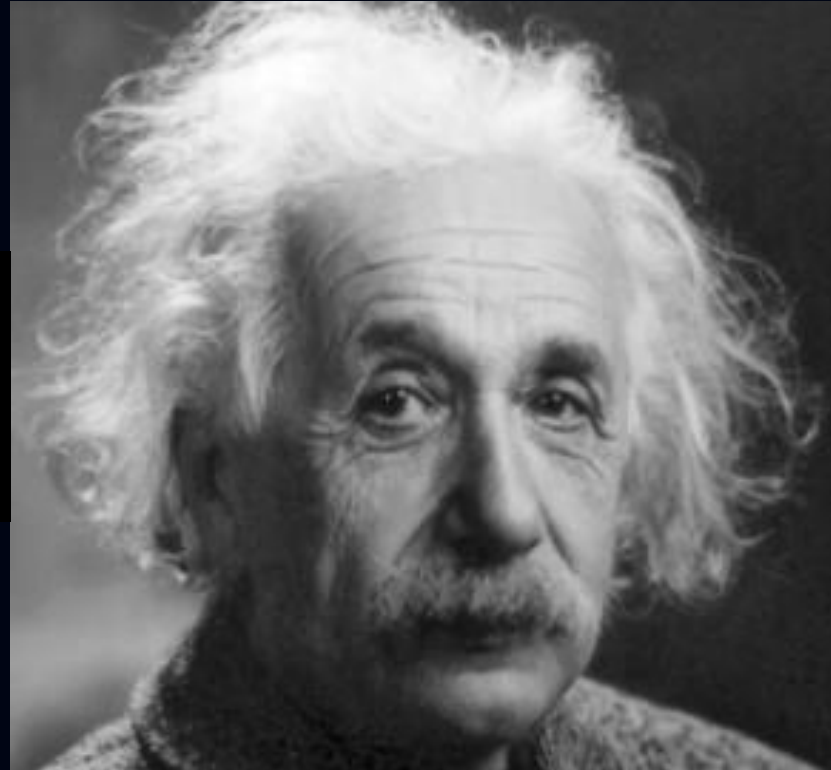
**Kyle L. Stone, Stark County Prosecutor
Stark County Regional Planning Commission**

GAMING THE SYSTEM?:

**PROTECTING YOURSELF FROM LIABILITY
ASSOCIATED WITH PUBLIC RECORDS REQUESTS**



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SUMMARY

- 1 - WHAT IS A “PUBLIC OFFICE”?**
- 2 - WHAT IS A “PUBLIC RECORD”?**
- 3 - WHAT IS A PROPER REQUEST? (MANDATING A RESPONSE)**
- 4 - METHODS OF RESPONDING.....**
- 5 - EXEMPTIONS/REDACTIONS**
- 6 - LITIGATION AND LIABILITIES**

Public Office

R.C. 149.011(A)

“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.”

WHAT ABOUT PRIVATE ENTITIES?

“functional equivalent” = “public office”

even if not “public office”, could still be “a person responsible for public records”

Public Office

ADMINISTRATIVE DUTIES

- TRAINING REQUIRED FOR ALL ELECTED OFFICIALS AND DESIGNEES**

- MUST CREATE AN INTERNAL POLICY**

- MUST BE CONSPICUOUSLY PLACED WITHIN OFFICE AND AT ANY 'BRANCH OFFICES'**

What is a RECORD?



A graphic celebrating Travis Kelce's record-breaking performance. On the left is a photo of Kelce in his red and white Kansas City Chiefs jersey, number 87. To the right, a red background features white and yellow text. The top right corner has the "CBS NFL" logo. The main text reads: "RECORD BREAKER CAREER", "5TH TE ALL-TIME WITH 10,000+ REC YDS", and "7TH STRAIGHT SEASON WITH 1,000+ REC YDS". Below this, it says "► EXTENDS RECORD BY TE". At the bottom, a small banner reads "TE 87 TRAVIS KELCE". The bottom left corner has the "CBS FANTASY" logo, and the bottom center has the text "RUSSELL J. HUNT (PH) 7-18-14, 77 YDS, TD".

What is a RECORD?

(1) – ‘fixed medium’;

(2) – ‘created, received by, or under the jurisdiction of the public office’; AND

(3) – ‘documents the activities of the office’

GENERAL PRINCIPLES

PRESUMPTION that records are to be disclosed **UNLESS** an **EXEMPTION** applies

Who can make a request?

‘ANY PERSON’

**-need not be Ohio resident or even
a United States Citizen**

-absent a specific law to the contrary

‘ANY PERSON’ = corporation/trust/other body

Method of request

NEED NOT BE IN WRITING

**HOWEVER – STATUTORY DAMAGES CAN
ONLY BE AWARDED IF:**

- HAND DELIVERY;**
- ELECTRONIC SUBMISSION; OR**
- CERTIFIED MAIL**

(O.R.C. § 149.43(C)(2))

Identity and Motive of Requestor

GENERALLY IRRELEVANT

COMMON EXCEPTIONS

**-INFO WOULD ASSIST IN IDENTIFYING,
LOCATING, OR DELIVERING THE RECORDS**

**-INMATE SEEKING CRIMINAL RECORDS
(O.R.C. § 149.43(B)(8)) –can require ‘justiciable
claim’ finding by sentencing judge(or successor)**

Can you charge \$\$\$ for records?

Requests to Inspect – No

Requests for production – It Depends:

- physical copies – cost of medium (disc/pages/etc.)**
 - postage also can be charged**
- electronic only copies – No (PDF emailed/DropBox)**
- fee for labor/time spent preparing – MOSTLY NO**

TIP – ALWAYS CALCULATE POSTAGE AND COST OF PHYSICAL MEDIUM BEFOREHAND AND REQUIRE PREPAYMENT!!!*

Requestor has right to choose medium of transmission

(1) – ON PAPER,

**(2) – SAME MEDIUM AS OFFICE KEEPS,
OR**

**(3) – ON ANY MEDIUM THE OFFICE
DETERMINES THE RECORD CAN
“REASONABLY BE DUPLICATED AS AN
INTEGRAL PART OF THE NORMAL
OPERATIONS OF THE PUBLIC OFFICE”**

**How long does a public office
have to fulfill the request?**



How long does a public office have to fulfill the request?

Inspection – must be prepared “promptly”

**Production – must be produced in a
“reasonable period of time”**

Court considerations in determining 'reasonableness'

- 1 – ability to identify responsive records (clarify vague requests)**
- 2 – Location and retrieval of records**
- 3 – Review, Analysis, Redaction (Usually most time consuming)**
- 4 – Preparation (copying or formatting into requestors choice of medium)**
- 5 – Delivery**

COMMUNICATION IS KEY!

Request must be for existing records and identified “with reasonable clarity”

A court will not compel a public office to produce public records when the underlying request is ambiguous or overly broad, or the requester has difficulty making a request such that the public office cannot reasonably identify what public records are being requested.

EXAMPLES:

- ALL EMAILS SENT BY AN INDIVIDUAL (NO SUBJECT MATTER OR TIME LIMITATION)**
- ALL RECORDS CONTAINING CERTAIN WORDS**
- EVERY REPORT FILED WITH/BY OFFICE OVER TIME PERIOD**
- ETC.**

EXEMPTIONS

MANDATORY – “MUST NOT RELEASE”

-ORC 149.43(A)(1)(v) – CATCH-ALL

“records the release of which is prohibited by state or federal law.”

DISCRETIONARY – “MAY RELEASE OR CHOOSE TO WITHHOLD”

**-IF OFFICE CHOOSES TO RELEASE, OPPORTUNITY TO
WITHHOLD THE SAME RECORD FOR FUTURE
REQUESTS IS NOW WAIVED**

-ORC 149.43(A)(1)(a-ss) – SPECIFICALLY ENUMERATED EXEMPTIONS

SPECIFICALLY ENUMERATED EXEMPTIONS-COMMON

MEDICAL RECORDS

CLEIRs (Confidential Law Enforcement Investigatory Records)

PERSONAL INFORMATION

DEPICTIONS OF VICTIMS

MEDICAL RECORDS

DEFINED AS 'ANY DOCUMENT OR COMBINATION OF DOCUMENTS THAT:

1) pertain to a patient's medical history, diagnosis, prognosis, or medical condition;

AND

2) were generated and maintained in the process of medical treatment.'

CLEIRs

Confidential Law Enforcement Investigatory Records



CLEIRs

Confidential Law Enforcement Investigatory Records

RECORD MAY BE WITHHELD IF BOTH OF THE FOLLOWING ARE SATISFIED:

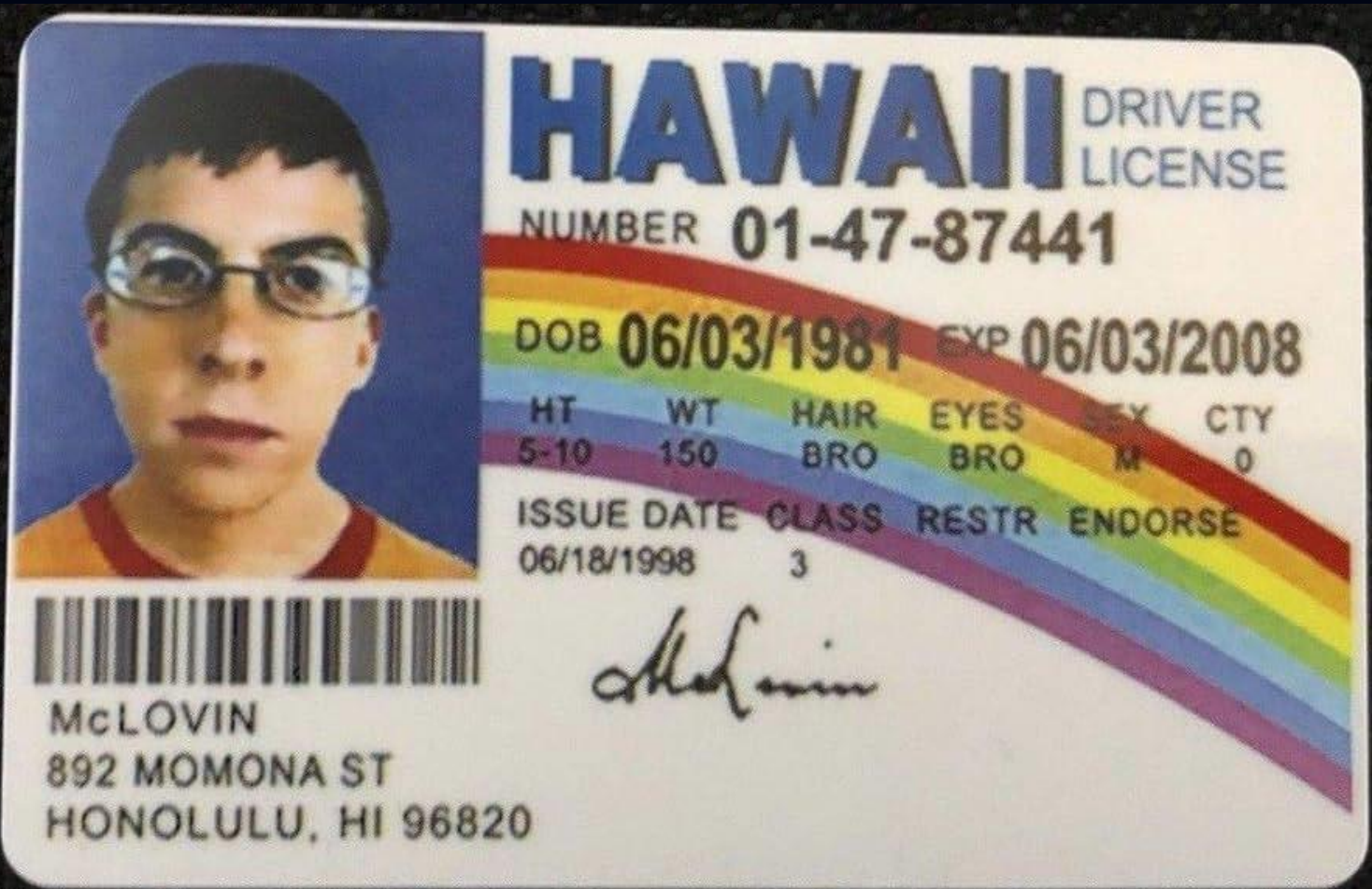
- (1) Pertains to a law enforcement matter of a criminal, quasi-criminal, civil, or administrative nature;**

AND

- (2) If released, would create a high probability of disclosing any of the following information:**

- Identity of an uncharged suspect;**
- Identity of a source or witness to whom confidentiality was reasonably promised;**
- Specific confidential investigatory techniques or procedures;**
- Specific investigative work product; OR**
- Information that would endanger the life or physical safety of law enforcement personnel, a crime victim, a witness, or confidential informant.**

PERSONAL INFORMATION



A photograph of a young man with dark hair and glasses, wearing an orange shirt, is positioned on the left side of the license. The background of the photo is blue. To the right of the photo, the word "HAWAII" is printed in large, bold, blue letters, followed by "DRIVER LICENSE" in smaller, black, sans-serif capital letters. Below this, the license number "01-47-87441" is printed in black. A rainbow graphic curves across the middle of the license. Below the rainbow, the following information is printed: "DOB 06/03/1981" and "EXP 06/03/2008". Below this, a table of personal characteristics is printed: "HT 5-10", "WT 150", "HAIR BRO", "EYES BRO", "SEX M", and "CTY O". Below the table, the "ISSUE DATE" is "06/18/1998" and the "CLASS" is "3". The "RESTR" and "ENDORSE" fields are blank. A signature, "McLOVIN", is written in black ink below the "CLASS" field. At the bottom left, a barcode is printed, followed by the name "McLOVIN", the address "892 MOMONA ST", and the city and zip code "HONOLULU, HI 96820".

HAWAII DRIVER LICENSE
NUMBER **01-47-87441**

DOB **06/03/1981** EXP **06/03/2008**

HT	WT	HAIR	EYES	SEX	CTY
5-10	150	BRO	BRO	M	O

ISSUE DATE **06/18/1998** CLASS **3** RESTR ENDORSE

McLOVIN

McLOVIN
892 MOMONA ST
HONOLULU, HI 96820

PERSONAL INFORMATION

DRIVERS LICENSE NUMBERS

SOCIAL SECURITY NUMBERS

STATE/FED TAX ID NUMBERS

CHECKING/SAVINGS ACCOUNT NUMBERS

CREDIT CARD NUMBERS.....

**ANY OTHER FINANCIAL OR MEDICAL ACCOUNT
NUMBERS**

DEPICTIONS OF VICTIMS

LAW

Kobe Bryant family settles the helicopter crash photos lawsuit for \$28.5 million

MARCH 1, 2023 · 2:42 AM ET

By The Associated Press



Vanessa Bryant, center, Kobe Bryant's widow, leaves a federal courthouse with her daughter Natalia and soccer player Sydney Leroux in Los Angeles, Aug. 24, 2022.

Jae C. Hong/AP

DEPICTIONS OF VICTIMS

Depictions by photograph, film, videotape, or printed or digital image of either “a victim of an offense the release of which would be, to a reasonable person of ordinary sensibilities, an offensive and objectionable intrusion into the victim’s expectation of bodily privacy and integrity” or “captures or depicts the victim of a sexually oriented offense, as defined in section 2950.01 of the Revised Code, at the actual occurrence of that offense.”

REDACTIONS/NON-DISCLOSURE

“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 “record.”

For records on paper, redaction is the blacking out of non-public information in an otherwise public document. A public office may redact audio, video, and other electronic records by processes that obscure or delete specific content.

REDACTIONS/NON-DISCLOSURE

DUTIES:

- shall notify the requester of any redaction or make the redaction plainly visible.**
- shall provide the requester with an explanation, including legal authority, setting forth why the request was denied.**

SAMPLE

Jason Maddox Redaction Documentation

Maddox – Paper File 3

p. 1 – Identity of Abused or Delinquent Child (Ohio Revised Code § 149.435)

p. 2 – Identity of Abused or Delinquent Child (Ohio Revised Code § 149.435)

– Social Security Number (ORC § 149.43(A)(1)(dd))

p. 3 – Identity of Abused or Delinquent Child (Ohio Revised Code § 149.435)

pp. 25-35 – Full page redactions –

– Document misplaced into file

p. 35 – Identity of Abused or Delinquent Child (Ohio Revised Code § 149.435)

pp. 41, 43, 45 – Handwritten

01.04.2017, 2020-Ohio-5585 an

(A)(1), State ex rel. Summers v. Fox, 163 Ohio
434(A)(1)(g)

p. 47 – Identity of Abused or Delinquent Child (Ohio Revised Code § 149.435)

pp. 49-102 – Forensic Interview and Transcript of Interview – Medical Records (ORC 149.43(A)(1)(a),
AKA 149.43(B)(1)(a) referencing ORC 3101.02-0201)

p. 103 – Identity of Abused or Delinquent Child (Ohio Revised Code § 149.435)

p. 105 – Identity of Abused or Delinquent Child (Ohio Revised Code § 149.435), SSNs (ORC §
149.43(A)(1)(dd))

p. 107 – Identity of Abused or Delinquent Child (Ohio Revised Code § 149.435)

p. 111 – Identity of Abused or Delinquent Child (Ohio Revised Code § 149.435)

p. 127 – SSN – ORC 149.43(A)(1)(dd)

Microsoft Word
Document

PUBLIC RECORDS LITIGATION

1. MANDAMUS ACTION IN ONE OF THE FOLLOWING COURTS:

- COMMON PLEAS**
- COURT OF APPEALS**
- SUPREME COURT OF OHIO**

2. COURT OF CLAIMS – SPECIAL PROCEDURE DEFINED IN R.C. 2743.75

- EXPEDITED PROCESS/MEDIATION**

POTENTIAL LIABILITY

A. ATTORNEY FEES – WITHIN DISCRETION OF THE COURT

ONLY FOR FEES DIRECTLY TIED TO MANDAMUS ACTION

PRO SE – NO ATTORNEY FEES ARE TO BE HAD

*even if pro se relator is an attorney

B. STATUTORY DAMAGES

FIXED AT \$100/day FOR EACH BUSINESS DAY AFTER THE FILING OF
THE MANDAMUS COMPLAINT

CAPPED AT \$1,000 TOTAL (DOES NOT PERMIT STACKING IF IT IS
ESSENTIALLY THE SAME REQUEST)

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QUESTIONS?

CALL OR EMAIL ME:

Aaron Violand

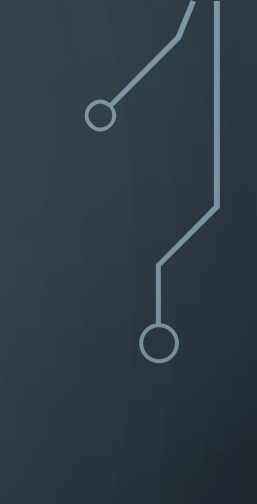
330-451-7915

ajvioland@starkcountyohio.gov

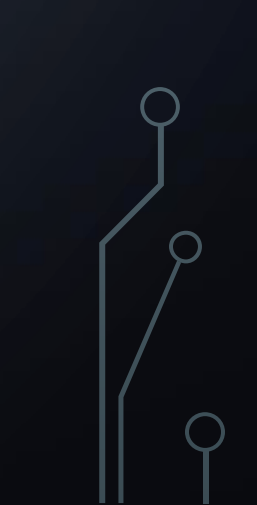


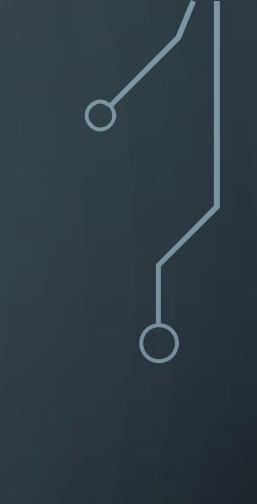
RECORDS RETENTION

SO WE HAVE ALL THESE FILES, AND I KNOW I NEED TO PROVIDE THEM IF REQUESTED. HOW LONG DO I HAVE TO KEEP THEM AND HOW CAN I GET RID OF THEM

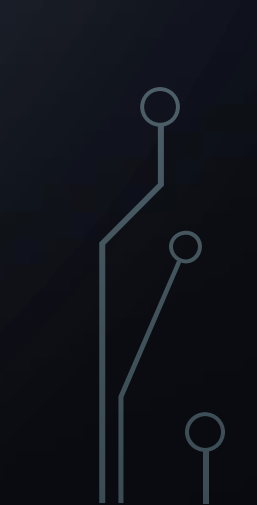


BENEFITS OF PROPER RECORDS MANAGEMENT

- Space saving
 - Time saving
 - Promotes overall public trust
 - Documentation of the institutional memory of your local government
- 
- 



ELEMENTS OF AN EFFECTIVE RECORDS MANAGEMENT SYSTEM

- All offices have current schedules of records retention and disposition
 - All public records are accessible to the public and to government entities
 - Active records stored at site of creation and inactive records are stored offsite, organized for retrieval if requested
 - Permanent historical records are properly preserved
 - Policies and procedures created for how to respond to a public records request
 - All local, state, and federal laws are followed
- 
- 

RECORDS COMMISSIONS

FUNCTIONS OF RECORDS COMMISSIONS

- Provide rules for retention and disposal of records
- Review retention schedules and disposal requests
- Provide that proper procedures are followed for scheduling and disposing of records
- Revise retention schedules

MUNICIPAL RECORDS COMMISSIONS (ORC 149.39)

- Chief Executive (or appointed representative) as chairman
- Chief Fiscal Officer
- Chief Legal Officer
- Citizen (appointed by the chairman)
- Can hire an archivist or records manager
- Shall appoint a secretary who may or may not be a member of the commission
- Must meet at least once every 6 months

TOWNSHIP RECORDS COMMISSION ORC 149.42

- Chairman of the Board of Township Trustees
- Fiscal Officer of the Township
- Must meet at least once every 12 months (recommended to meet more frequently)

SPECIAL TAXING DISTRICT RECORDS COMMISSION (PARKS DISTRICT, LIBRARY DISTRICT ETC.) ORC 149.412

- Chair of the Governing Board
- Fiscal representative from Board
- Legal representative from Board
- Must meet at least once every 12 months (more frequent meetings recommended)

RECORDS COMMISSION MEETINGS

- Meetings must be open to the public
- Public must be given notice that the meeting is going to occur
- Keep detailed minutes

RETENTION SCHEDULES

- Retention schedule lists every record series that your office creates on an *ongoing* basis.
- A retention schedule is a list of the records an office creates with a corresponding retention period that states how long the record should be retained.

USING A RETENTION SCHEDULE

- Provides for ongoing disposal
- Prevents build up of unnecessary records
 - – Saving space
 - – Improve efficiency
- Can be a legal asset
- Negotiate public records requests
 - – ORC 149.43(B)(2)

ONE DOES NOT SIMPLY

**DISPOSE OF RECORDS WITHOUT A
LEGALLY APPROVED RETENTION SCHEDULE**

imgflip.com

LITIGATION AND LIABILITIES FOR IMPROPER DISPOSAL

- Civil Lawsuit
- Court of Claims proceedings
- Forfeiture of \$1,000 per violation (capped at \$10,000)
- “Reasonable Amount” of Attorney Fees

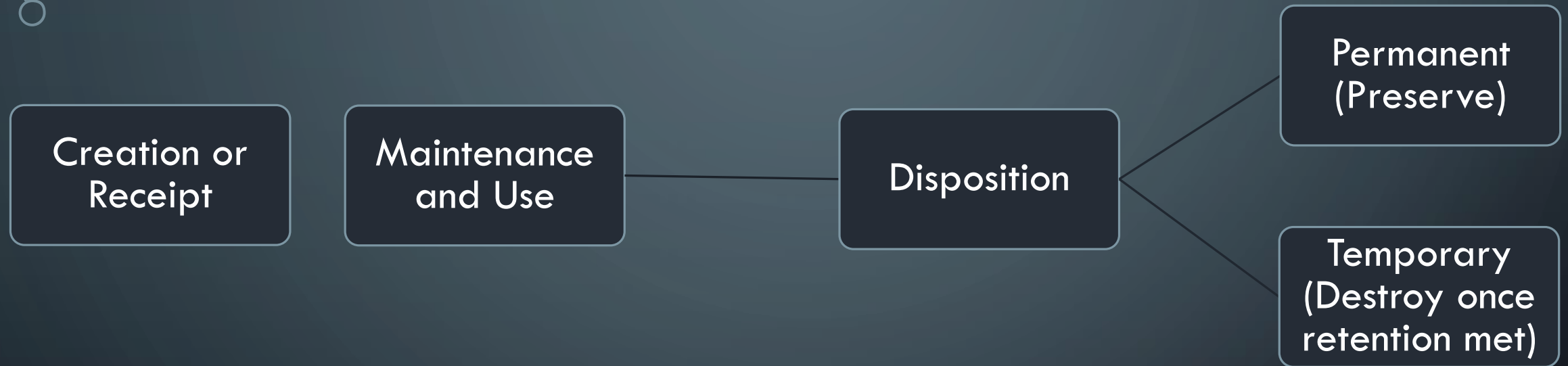
INVENTORY THE RECORDS YOUR OFFICE CREATES

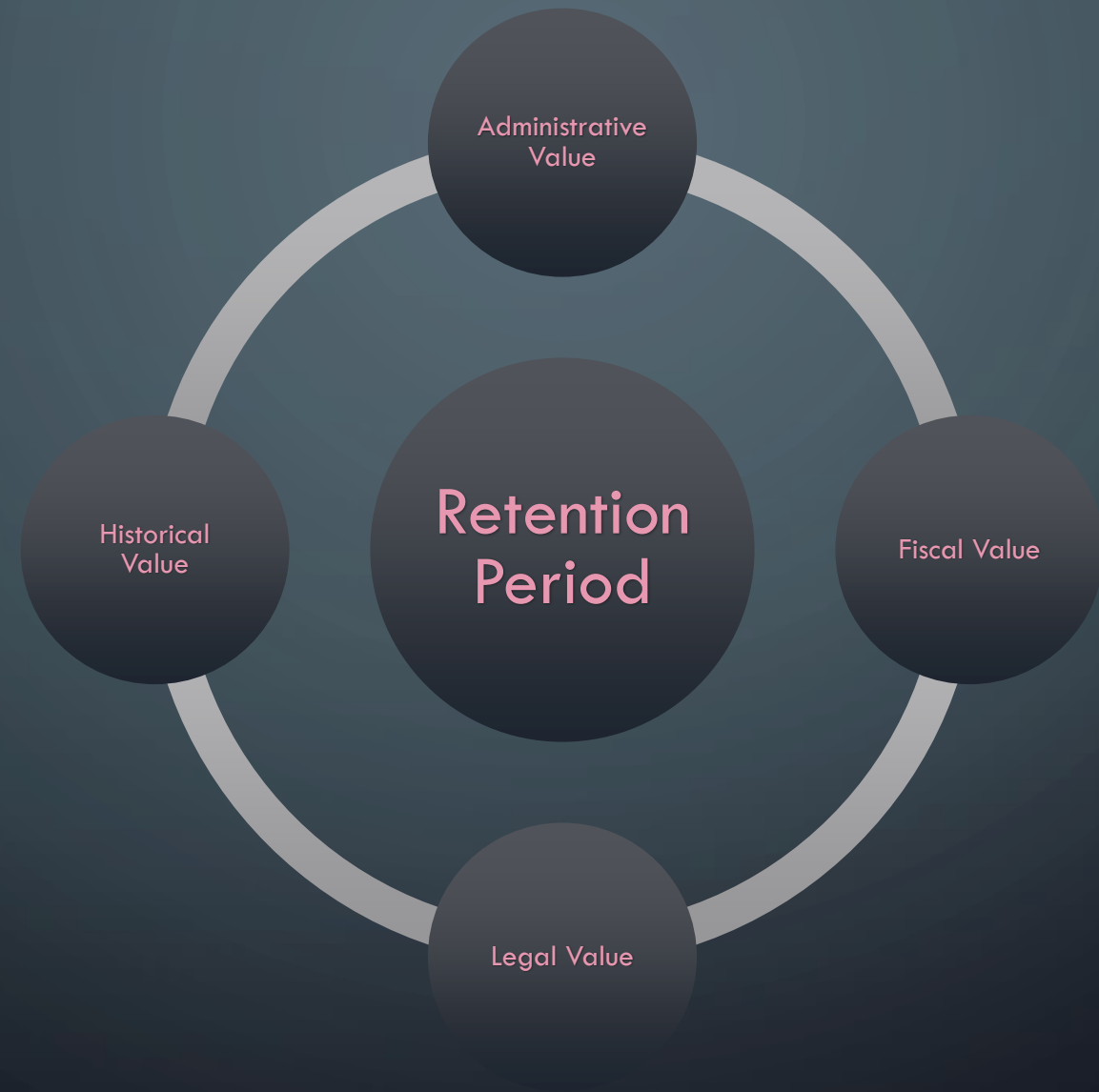
- What kind of records you create (types, formats, etc.)
- Where you are storing your records
- How often are they needed/referenced

RECORD SERIES

- Overarching group category the records belong to.
- 3 Questions in determining a series:
 - 1. Are these records filed together
 - 2. Do these records have a common purpose
 - 3. Are they needed for the same time period.

RECORDS LIFE CYCLE





DETERMINING RETENTION PERIODS

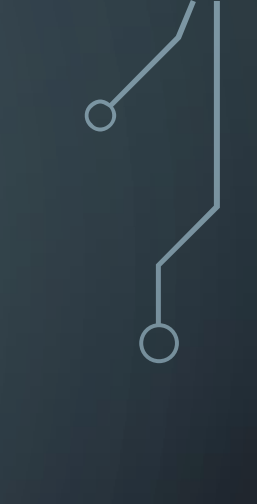
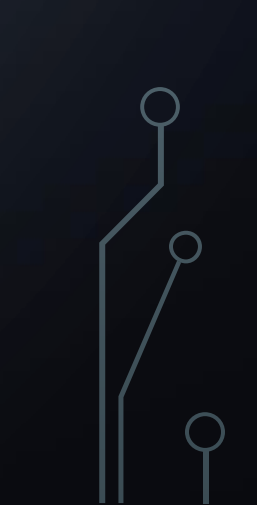
- **Administrative Value**
 - Use in carrying out an agency's functions (Check with the records creators)
- **Fiscal Value**
 - Pertains to receipt, transfer, payment, adjustment, or encumbrances of funds. May be required for an audit (check with auditor/fiscal officer)
- **Legal Value**
 - Documents or protects rights or obligations of citizens or of the agency that created it; retain until all legal rights and obligations expire (check with legal counsel)
- **Historical Value**
 - Documents and Agency's organization, policies, decisions, procedures, operations, and other activities; contains significant information about people, places, or events and may have secondary value as a source of information for persons other than the creator (check with the State Archives-LDRP)

RETENTION PERIODS

- Retention Periods are determined and expressed in 3 ways
 - Time (“retain 3 years” “retain permanently”)
 - Event or Action (“retain until audit report is released”)
 - Time and Event or Action (“retain 3 years after case closed”)
- Retention periods may be subdivided
 - “Retain in office 3 years, then retain storage 6 more years, then destroy”



RETENTION SCHEDULES (FORM RC-2)

- Provide the foundation of any records management program
 - Lists the records that an office maintains and the length of time the records should be kept
 - When the retention period has expired, the records can be disposed of *on an ongoing basis*
- 
- 
- 

FORM RC-2

- Part I – Signatures and Certification

- – Section A – Local Government Unit
- – Section B – Records Commission (approving)
- – Section C – Ohio Historical Society (informational review)
- – Section D – Auditor of State's Office (review/approval)



RC2 Example



RC2 Form

- Part 2 – Complete the Columns

- – Schedule number
- – Record title and description (*NO DATES*) (*NO GENERAL TERMS*)
- – Retention period
- – Media type

- Good: Annual reports, minutes, purchase orders, subject files, etc.

- Bad: “payroll records”

- Separate that into categories: Payroll journal, payroll warrant, cancelled checks, employee earning record, withholding information, W-2, W-4, etc.



Create

- Complete Retention Schedule
- Responsible Official Signs

Local
Approval

- Open Meeting of Records Commission
- Chairperson Signs

State
Review

- State Archives-LGRP reviews, signs, and forwards to Auditor of State
- Auditor of State reviews and signs

Approved
RC-2

- Returned to local government by State Archives-LGRP
- Start using to authorize records disposals

OBSOLETE RECORDS

- During the inventory, you may have identified records that your government no longer creates or only created once
 - – E.g. Records regarding an employee childcare program your office participated in from 1980- 1990
- These records should be listed on an RC-1, One-Time Records Disposal of Obsolete Records

ONE-TIME DISPOSAL (FORM RC-1)



RC1 Example

- Same format and information as RC-2
 - – *Except* include dates for these records
- Same approval process as RC-2

CERTIFICATE OF RECORDS DISPOSAL (FORM RC-3)



RC3 Example

- Part I – Contact information and certification
 - – Have form signed by the responsible official
- Part II – List records to be disposed
 - – Title (from retention schedule)
 - – Schedule number (from retention schedule)
 - – RC approval date (from retention schedule)
 - – Media type to be destroyed
 - – Media type to be retained (if any)
 - – Inclusive dates of records
 - – Proposed date of disposal (15 *business* days in advance)

EMAIL

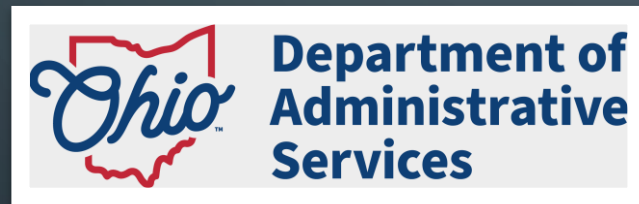
- Email is not a record series, it is a delivery method
- Email should not be scheduled as a record series on the RC-2
- The content of each individual email should determine what record series it belongs to, and thus the retention period.
- Many of these will be 'transient records' belonging to the correspondence series

Records Series Title	Agency and Series Authorization Number	Records Series Description	Confidential Description	Vital Description	Retention Period
Transient Documents	GAR-CM-04 10551778	All informal communications which convey information of temporary importance in lieu of oral communication including telephone voicemail, chats, posts, instant and text messages, post-it notes, drafts, generic emails, social media posts, and shared departmental calendars. These communications have very little administrative value as they do not set policy, establish guidelines, define procedures, certify a transaction or become a receipt.			Electronic- Retain until no longer of administrative value, then destroy Paper- Retain until no longer of administrative value, then destroy

INCLUDE ELECTRONIC RECORDS IN PUBLIC RECORDS POLICY

- Records in the form of e-mail, text messages, and instant messaging, including those sent and received via hand held communications device, are to be treated in the same fashion as records in other formats, such as paper or audiotape
- Public records content transmitted to or from private accounts or personal device is subject to disclosure. All employees or representatives of this office are required to retain their e-mail records and other electronic records in accordance with applicable records retention schedule

RECORDS MANAGEMENT RESOURCES





ANY QUESTIONS?

BENNET STUFFEL

330-451-7966

BMSTUFFEL@STARKCOUNTYOHIO.GOV