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Slide 2




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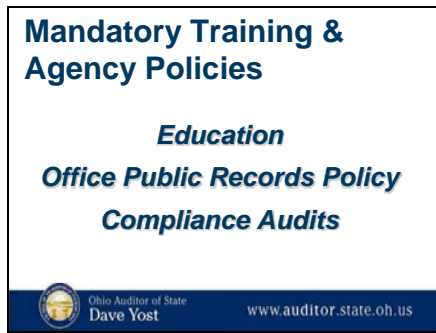
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Slide 4

**Education Requirement**  
**R.C. 149.43(E)(1)**

- All elected officials or their designees are required, once per elected term, to attend a 3 hour Public Records training program approved by the Attorney General
- Only a course approved by the Attorney General satisfies this training requirement
- A certificate is provided to the **attendee** of the certified course; the Attorney General maintains a record of attendees



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**Office Public Records Policy**  
**R.C. 149.43(E)**

- All public offices must prepare, distribute, and post a public records policy
- The Auditor of State's model public records policy is available at:  
<http://www.auditor.state.oh.us/services/opengov/PublicRecordsPolicy85x11.pdf>
- The model public records policy is for guidance, it is **not** a substitute for an individualized policy suited to each public office

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**Compliance**

**The State Auditor audits public offices for:**

- Compliance with the training of elected officials

**AND**

- Public Records policy provisions for all public offices.

**AND**

- Compliance with public access to the records retention schedules of each public office

For audit details, visit the Ohio Auditor's web site to view Technical Bulletin 2007-014:  
[www.auditor.state.oh.us/services/lgs/bulletins/2007/2007-014.pdf](http://www.auditor.state.oh.us/services/lgs/bulletins/2007/2007-014.pdf)



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**Public Records Act Overview**

**Definitions**  
**Obligations**  
**Exceptions**  
**Liabilities**



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**Definitions – The “Who?” of Public Records**

- **Public Office** – R.C. 149.011(A)
- Any private entity that is the **functional equivalent** of a governmental entity
- A **person responsible for public records**




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**Definitions – The “Who?” of Public Records**

**Factors considered in “Functional Equivalence”:**

- Whether the entity performs a **governmental function**
- Level of **government funding**
- Extent of **government involvement or regulation**
- Whether the entity was **created by the government or to avoid the requirements of the Public Records Act**

*State ex rel. Oriana House, Inc v. Montgomery* (2006), 110 Ohio St. 3d 456.



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**Definitions – The “What?” of Public Records**

**Records** – R.C. 149.011(G):

- Have information stored on a fixed medium (tapes, e-mails, photos, films, videos, papers, etc.), **and**
- Are created or received by, or come under the jurisdiction of, a public office, **and**
- Document what the public office does: the organization, functions, policies, decisions, procedures, operations, or other activities **of the office**



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**Definitions – The “When” of Public Records**

**Public Records** – R.C. 149.43(A) includes records “**kept by**” any public office

“**Kept by**” means any record that is actually in existence and in the possession of the public office or person responsible for public records

- Examples of records **not “kept by”** a public office:
  - (1) a record not yet in existence,
  - (2) a record that has been disposed of lawfully



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**Electronic Records**

*E-mail*

*Databases*

*Electronic Records Management*



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**Electronic Records**

**Email**

- Handle electronic records just like any other tangible record
- Analyze based on **content**, rather than storage medium



**Uniform Electronic Transactions Act** – R.C. Chapter 1306

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**Electronic Records**

**Databases**

- If a computer program can perform a search and produce a compilation or summary described by the requester, that output is deemed to already "exist" as a record for the purposes of the Public Records Act.
- A public office is not required to search a database for information and compile or summarize to create new records.

**Electronic Records Management Resources**

- Ohio Electronic Records Committee:  
<http://www.ohio.erc.org>

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**Notes**

**Notes can be "records," but are usually transient**

**Notes are not public records if they are:**

- 1) Kept as personal papers, not official records;
- 2) Kept for the employee's own convenience (for example, to recall events);

**AND**

- 3) Other employees did not use or have access to the notes

*State ex rel. Cranford v. Cleveland*, 2004 Ohio 4884

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**Drafts**

If a draft meets the definition of a record, it is subject to both the Public Records Act and records retention laws.



A public office can address the length of time that drafts must be kept in its records retention schedules.



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**Rights and Obligations**

- **Any "person"** can make a public records request, including corporations and other governmental agencies
- **No special format or special language** required
- A request may be **written** or **verbal**
- The requester's motive **is not relevant**. However, the request must at least be specific and describe in detail the records being sought
- A public office cannot require the requester to put it in **writing** or reveal his/her **identity**

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**Rights and Obligations**

- **Regular business hours**
- Copies at **"cost"**
- Payment **in advance** (optional)
- Methods of **delivery**



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**Modified Rights and Obligations  
- Journalists**

- A **journalist** can receive select residential or familial information about a specific peace officer, parole officer, prosecuting attorney, assistant prosecuting attorney, etc.
- The request **must** be in writing and include the journalist's name, title, and the name and address of the journalist's employer
- The request **must** also state that the disclosure of this information sought would be in the **public interest**

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**Modified Rights and Obligations  
- Courts**

- Access to most Ohio **court records** is governed by Sup. Ct. Rules of Superintendence R. 44-47, and court records retention by Sup. R. 26.01-.05
- Ohio **Rules of Procedure** create exceptions to the Public Records Act
- Judges and clerks of most courts are excepted from the definition of "elected officials" required to take public records training. R.C. 109.43(A)(2)

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**Miscellaneous**

**No obligation to:**

- Create new records – including electronic records
- Store records on particular media




- Provide complete duplication of the voluminous files of a public office
- Provide internet access to electronic public records

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**Public Records Act Exceptions**

**Unless the public office can identify an exception that clearly requires or permits withholding a requested record, it must disclose the record**

- Exceptions are created only by law  
(Exceptions are usually statutes, but they may also come from constitutional rights or common law)
- Persons cannot "contract out" of the Public Records Act



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**Mandatory/Catch-all Exception**

- Any state or federal law which **prohibits** the release of specified records – RC 149.43(A)(1)(v)
- Such records are prohibited from disclosure in response to a public records request, even if the public office would like to disclose it
- If any state statutes, rules, federal statutes or regulations prohibit public disclosure, then a public office **MUST NOT release** that record in response to a Public Records Request

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**Example: Student Records**

**Family Education Rights and Privacy Act of 1974 (FERPA)**

School officials may not disclose personally identifiable information about students without the written consent of the students or their parents, unless permitted to do so by the Act



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**Discretionary Exception**

- A record may be "confidential" if it is **excepted from disclosure under the Public Records Act**
- An "exception" means that a public office **does not have to disclose** the record in response to a request, but **may if it so chooses**.
- Thus, if any state or federal laws designate certain records as "not public record" then they **are not** subject to the provisions of the Public Records Act

**Note:** Some confidentiality laws, such as the Personal Information Systems Act, may apply to non-records

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**Waiver of Discretionary Exception**

- Waiver of an exception occurs by any voluntary disclosure of a record that could be appropriately withheld under one of the exemptions
- The disclosure **must** have been voluntary and **to a member of the public**
- Waiver is forever, and for everyone, as to **that specific record**

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**Example: Confidential Law Enforcement Investigatory Records**

**Step 1**  
Must pertain to a "law enforcement matter" involving:

- Specific suspicion of misconduct
- Conduct violates law (criminal, civil or administrative)
  - Not internal personnel discipline
- Agency has authority to enforce law

**Step 2**  
Release of record would disclose any of the following:

- Uncharged Suspect
- Confidential Source or Witness
- Physical Safety
- Investigatory techniques/procedures
- Investigatory Work Product

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**Miscellaneous**

**Government job application materials:**  
There is no public records exception that generally protects resumes and application materials submitted to public offices in the hiring process.

**Juvenile records:**  
Although it is a common misconception, there is no Ohio law that categorically excludes all juvenile records from public records disclosure.

**General Privacy:**  
Constitutional right to privacy is very limited.



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**Safety Officer Exceptions**

Peace Officer  
Parole Officer  
Prosecuting Attorney  
Assistant Prosecuting Attorney  
Correctional Employee  
Youth Services Employee  
Firefighter  
EMT  
BCI&I Investigators




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**Mandatory vs. Discretionary: Examples**

Mandatory Exceptions	Discretionary Exceptions
<ul style="list-style-type: none"> <li>Physician-patient privileged records</li> <li>Student education records</li> <li>Criminal history records obtained through LEADS</li> </ul>	<ul style="list-style-type: none"> <li>Trial preparation records</li> <li>"Infrastructure" and "security" records</li> <li>Confidential Law Enforcement Investigatory Records (CLEIRs)</li> </ul>



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**Additional Examples of Exceptions**

- **Security & Infrastructure Records** R.C. 149.433
- **Juvenile Records**
  - Juvenile Courts
  - Children Services Agency
  - Fingerprints and photographs statute



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**Exceptions Summary**

- If a record falls squarely within the mandatory "catch all" exception, **WITHHOLD**
- For discretionary exceptions, use **CAUTION** and withhold or waive. **Consult legal counsel!**
- If a record is clearly public with no applicable exceptions, **DISCLOSE**



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**How to Comply With Public Records Requests**

*Preparation*

*Negotiation/Clarification*

*Documentation*

*Withholding/Redacting*

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**Preparation: Tools**



**Lists:**

- Non-records
- Exceptions

**Retention Schedules:**

- Set and follow prudent records retention periods

**Periodic training of office staff**

**Yellow Book: keep on hand, linked online:**  
[www.auditor.state.oh.us/services/opengov/resources/2011-3-15\\_SunshineLawsManual\\_CO.pdf](http://www.auditor.state.oh.us/services/opengov/resources/2011-3-15_SunshineLawsManual_CO.pdf)

**Contact information of your legal counsel**

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**Mandatory Negotiation/Clarification**

**What is “overly broad”?**

- Mandatory clarification is required when a request is denied as **ambiguous** or **overly broad**, or the office **can’t reasonably identify** which records are being requested
- Public office must inform the requester how the records are maintained and accessed, so that the requester has an opportunity to revise the request

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**Optional Negotiation/Clarification**

**A public office *may* ask a requester to make a request in writing, or to provide their identity, or for the intended use of the records, if . . .**

- The office believes it would benefit the requester by enhancing the office’s ability to identify, locate or deliver the requested records,

**AND**

- The office **first** discloses that the requester does not need to submit a request in writing, or reveal his/her identity, or the intended use of the records

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**Documentation**

- Documenting the steps taken to satisfy a public records request is a **must!**
- If a request is made verbally, **write it down**
- Send a **receipt letter** if you cannot satisfy a request immediately. **(See Handout Page 1)**
- Document the **format** in which the requester wishes to receive the records
- Document the agency's **charges** per copy, if copies are requested

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**Withholding or Redacting:  
Definition and Identification**

- **"Redaction"** - 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
- Redactions **must** be plainly visible, or the office must advise the requester of what redactions have been made – R.C. 149.43(B)(1)

*(See Handout Page 2)*

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**Withholding or Redacting:  
Explanation of legal authority required**

- If a request is denied in part (redactions within a document), or in whole (entire document), the public office must provide an explanation of why the request was denied, **including legal authority!!**  
– R.C. 149.43(B)(3)
- The explanation can be provided on the document itself or in a cover letter
- Ohio Revised Code and Administrative Code online:  
– <http://codes.ohio.gov> (for office and requester use)

*(See Handout Pages 3, 4)*

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**Liabilities for Violating the Public Records Act**

- **Mandamus Action** by "person aggrieved" by violation of Division 149.43(B) of the Public Records Act  
A legal action in common pleas, appellate court, or the Ohio Supreme Court to enforce the Act
- **Civil Damages** (only if violation caused actual lost use of records)
- **Attorney's fees** and court costs
- **Possible reduction** of damages and fees

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**Records Retention**

*Obligations*  
*Liabilities*  
*Schedules*

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**Obligations of Public Offices for Records Retention**

- **Shall make** only such records as are necessary to document the organization, functions, and essential transactions of the agency, and to protect the legal and financial rights of the state and persons directly affected – R.C. 149.40
- **May not** destroy, mutilate, or otherwise dispose of records except as provided by law or under the rules of the records commissions – R.C. 149.351

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**Obligations of Public Offices for Records Retention**

- **Shall organize and maintain** public records in a manner that they can be made available for inspection or copying

**AND**

- Shall have available a copy of its **current records retention schedule** at a location readily available to the public – R.C. 149.43(B)(2)

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**Liabilities for Violating Records Retention Laws**

**Any person may file either or both of the following, in common pleas court:**

- A civil action for **injunctive relief** to compel compliance with this section, and an award of reasonable attorney’s fees, and/or
- A civil action to recover a **forfeiture of \$1,000 for each violation**, and an award of reasonable attorney’s fees – R.C. 149.351

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**Records Retention Schedule: Contents**

- Record Series **Title**
- Series Description – describes the **purpose** and **function** of the record series and tells what **types of information** can be found in the records
- Set retention period, format(s) to be retained, and disposal method(s)

**Create the schedule for someone who has no knowledge of the records – minimize use of jargon and acronyms**

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**Factors Determining Retention Periods**

- **Administrative Purposes** – period needed by the office to carry out its duties
- **Fiscal Tracking** – needs pertaining to the receipt, transfer, payment, adjustment, or encumbrances of funds. Documents subject to audit.
- **Legal Value** – documents relating to rights or obligations of citizens, or of the agency that created it
- **Historical Value** – Ohio Historical Society/Archives

*(See Handout Page 5)*



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**Retention Schedule Approval**

- 1. Local Records Commission** (State Agencies – DAS)  
Review and approve or return for modification, then forward to:
- 2. Ohio Historical Society**  
To review and forward within 60 days to --
- 3. Auditor of State**  
Review and approve or disapprove within 60 days

***The same agencies review Applications for One-time Disposal of Obsolete Records***



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**Records Retention Information**

*For more information, please contact your records commission, and/or:*

**State Archives**  
614-297-2536  
[localrecs@ohiohistory.org](mailto:localrecs@ohiohistory.org)





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**Open Meetings Act Overview**

*Definitions*

*Obligations*

*Executive Sessions*

*Liabilities*



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**Who is Subject to the Open Meetings Act and When? Definitions**



**Public Body:**  
Any decision-making body of the state, its political subdivisions, and school districts (including any committee or sub-committee of each body)

**Meeting:** (1) **Prearranged** gathering of  
(2) a **majority** of members of public body  
(3) conducting or discussing **public business**



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**Looking Deeper:  
What is a Meeting?**

- **Discussion/Deliberation vs. Information Gathering:**
  - Discussion and deliberation involve the weighing of reasons for and against a course of action and **must be conducted in open**
  - Gatherings **solely** to receive factual information **may** not be meetings - **but consult legal counsel first!**
- **Work sessions:**
  - **Prearranged** work sessions, retreats, etc. where **public business is discussed** among a **majority of the members** of the public body are "meetings" and must be as noticed and open as any other meeting



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**Obligations**

Give appropriate **notice**  
R.C. 121.22(F)

Take action & deliberate on public business in **open** session  
R.C. 121.22(C)

Take & file **minutes**  
R.C. 121.22(C)



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**Obligation 1: Notice (by rule)**  
Types of Meetings and the Notice Required

**Regular Meetings** → Meetings held at prescheduled intervals  
**Notice** = time and place

**Special Meeting** → Any meeting that is not a regular meeting  
**Notice** = at least 24 hrs advance notice of time, place, and purpose.

**Emergency Meeting** → Requiring immediate action  
**Notice** = immediate to news media



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**Obligation 2: Openness**  
Take Action & Deliberate in Public

**Where must public meetings be held?**  
– In a public forum within the area that the public body serves

**Does the public have a right to speak at public meetings?**  
– Not required by the OMA, but may otherwise be permitted or required

**Can members of the public record proceedings?**  
– Yes, if it does not disrupt the meeting



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**Obligation 3: Minutes**

"The minutes of a regular or special meeting of any public body shall be promptly prepared, filed, and maintained and shall be open to the public."  
 – R.C. 121.22(C)

- Minutes do not have to be a verbatim transcript of the proceedings but must be accurate and enable the public to understand the rationale behind the public body's decisions.
- There is no requirement to keep minutes of executive sessions.

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**Executive Sessions**

**Proper Procedures:**

- Must be preceded by specific motion, second, and roll call vote
- Motion should state the specific permissible topic(s) to be discussed
- Meetings must always begin & end in open session (cannot adjourn the meeting from within executive session)

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**Executive Sessions**

**Acceptable Topics for Discussion:**

- Personnel (**must** state specific type of personnel matter to be discussed, but **not** identity of the person)
- Property
- Court action (only with the body's attorney)
- Collective bargaining
- Matters confidential by law
- Security arrangements
- County hospitals' trade secrets

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**Executive Sessions**

**Present in Executive Sessions:**

Who may members include?  
 – **anyone who is invited to stay**

Who may the members exclude?  
 – **any other members of the public**



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**Restrictions On Executive Session**

- There can be **no decision-making**
- **No voting**, including "straw polls"
- Non-permitted matters may **not** be discussed in executive session, even if intertwined with permitted matters




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**Executive Sessions - Records**

- Executive sessions provide private space for discussion, but they do not **make** any materials confidential, including documents that are handed out
- Analyze public records issues separately
- Handing records to members of public in executive session may waive any exceptions that might apply to those records
- No minutes need to be taken (and probably shouldn't be) of executive session discussions



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**Miscellaneous Topics:  
Virtual Participation**

- A member "shall be present in person at a meeting open to the public to be considered present or to vote at the meeting and for purposes of determining whether a quorum is present at the meeting"  
– R.C. 121.22(C)
- Virtual participation (teleconferencing) is only permitted when it is **specifically authorized by law**

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**Penalties for Violating the OMA**

*Fines  
Injunction  
Court Costs  
Attorney Fees  
Action Invalidated  
Removal from Office*




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**Questions & Answers**

**Auditor of State Open Government Unit  
Web Page:**  
[www.auditor.state.oh.us/services/opengov/default.htm](http://www.auditor.state.oh.us/services/opengov/default.htm)

**Yellow Book Online:**  
[www.auditor.state.oh.us/services/opengov/resources/2011-3-15\\_SunshineLawsManual\\_CO.pdf](http://www.auditor.state.oh.us/services/opengov/resources/2011-3-15_SunshineLawsManual_CO.pdf)

For Additional Information ...

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**Open Government Unit**  
 88 East Broad Street, 5<sup>th</sup> Floor  
 Columbus, Ohio 43215

**Desirée Forbes**  
**Deputy Chief Legal Counsel**  
 Presenter Phone: (800) 282-0370  
 Presenter Fax: (614) 466-4333  
 E-mail: [contactus@auditor.state.oh.us](mailto:contactus@auditor.state.oh.us)

 Ohio Auditor of State  
**Dave Yost** [www.auditor.state.oh.us](http://www.auditor.state.oh.us)

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**Dave Yost**  
 Auditor of State

88 East Broad Street  
 Columbus, Ohio 43215  
 Phone: (800) 282-0370 Fax: (614) 466-4490  
 E-mail: [contactus@auditor.state.oh.us](mailto:contactus@auditor.state.oh.us)  
[www.auditor.state.oh.us](http://www.auditor.state.oh.us)

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