

PUBLIC RECORD REQUESTS

Introduction:

The Ohio Attorney General's Sunshine Law Handbook states the following:

If there is clear and convincing evidence that a private entity is the "functional equivalent" of a public office, that entity will be subject to the Public Records Act.¹⁵ Under the functional equivalency test, a court must analyze all pertinent factors, including: (1) whether the entity performs a governmental function; (2) the level of government funding; (3) the extent of government involvement or regulation; and (4) whether the entity was created by the government or to avoid the requirements of the Public Records Act.¹⁶ The functional equivalency test "is best suited to the overriding purpose of the Public Records Act, which is "to allow public scrutiny of public offices, not of all entities that receive funds that at one time were controlled by the government." In general, the more a private entity is funded, controlled, regulated and/or created by government, and the greater the extent that the entity is performing a governmental function, the more likely a court will determine that it is a "public institution" and therefore a "public office" subject to the Public Records Act.

There is an exception to the public records law outlined in R.C. Section 1724.11. That Section states as follows:

[1724.11 Confidentiality of information.](#)

(A) When a community improvement corporation is acting as an agent of a political subdivision designated pursuant to section [1724.10](#) of the Revised Code and at all times as a county land reutilization corporation, both of the following apply:

(1) Any financial and proprietary information, including trade secrets, submitted by or on behalf of an entity to the community improvement corporation in connection with the relocation, location, expansion, improvement, or preservation of the business of that entity, or in the pursuit of any one or more of the purposes under division (B) of section [1724.01](#) of the Revised Code for which a county land reutilization corporation is organized, held or kept by the community improvement corporation, or by any political subdivision for which the community improvement corporation is acting as agent, is confidential information and is not a public record subject to section [149.43](#) of the Revised Code.

(2) Any other information submitted by or on behalf of an entity to the community improvement corporation in connection with the relocation, location, expansion, improvement, or preservation of the business of that entity held or kept by the community improvement corporation, or by any political subdivision for which the community improvement corporation is acting as agent, is confidential information and is not a public record subject to section [149.43](#) of the Revised Code, until the entity commits in writing to proceed with the relocation, location, expansion, improvement, preservation of its business, or other purpose under division (B) of section [1724.01](#) of the Revised Code.

It is the opinion of the Land County Land Reutilization Corporation (LCLRC) that it is subject to the Public Records law. The following guidelines have been developed in an effort to comply with the aforementioned Attorney General's publication and public records law. Any denial of public records in response to a valid request will be accompanied by an explanation, including legal authority, as outlined in the Ohio Revised Code.

The LCLRC, in accordance with the Ohio Revised Code, defines records as including the following:

Any document that is created or received by, or comes under the jurisdiction of a public office that documents the organization, functions, policies, decisions, procedures, operations, or other activities of

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the office. All records of the LCLRC are public unless they are exempt from disclosure under the Ohio Revised Code.

Section 1.1

It is the intent of the LCLRC that, as required by Ohio law, its records will be organized and maintained so that they are readily available for inspection and copying. Record retention schedules, which are currently under development, will upon completion be maintained and updated regularly. This schedule, once completed, will be made available for public inspection via the documents posting on the LCLRC's website.

Section 2.

Each request for public records will be evaluated for a response using the following guidelines:

Section 2.1

Although no specific language is required to make a request, the requester must at least identify the records requested with sufficient clarity to allow the LCLRC to identify, retrieve, and review the records. If the request is not clear as to what records are being sought, the LCLRC will use reasonable effort to contact the requester for clarification, and will attempt to assist the requestor in revising the request by informing the requestor of the manner in which the LCLRC keeps its records.

Section 2.2

Any person or entity requesting records does not have to put the records request in writing, and does not have to provide his or her identity or the intended use of the requested public record.

Unless specifically required or authorized by state or federal law or in accordance with division (B) of this section, the LCLRC may limit or condition the availability of public records by requiring disclosure of the requester's identity or the intended use of the requested public record. Any requirement that the requester disclose the requestor's identity or the intended use of the requested public record constitutes a denial of the request. The LCLRC, in response to a request for public records may ask a requester to make the request in writing, may ask for the requester's identity, and may inquire about the intended use of the information requested, *but may do so only after disclosing* to the requester that:

- a written request is not mandatory and,
- that the requester may decline to reveal the requester's identity or the intended use, and
- that a written request or disclosure of the identity or intended use would benefit the requester by enhancing the ability of the LCLRC to identify, locate, or deliver the public records sought by the requester.

Section 2.3

LCLRC public records are to be available for inspection during regular business hours, with the exception of published holidays and or closure of the LCLRC Office. Every attempt will be made to make LCLRC public records promptly available for inspection. Copies of public records will be made available within a reasonable period of time. "Prompt" and "reasonable" take into account the volume of records requested; the proximity of the location where the records are stored; and the necessity for any legal review of the records requested.

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Section 2.4

Any denial of public records requested will include an explanation, including legal authority. If the request is in writing, the explanation for denial of the request will be provided to the requester in writing. If portions of a record are public and portions are exempt, the exempt portions will be redacted from the released records. If there are redactions, each redaction will be accompanied by a supporting explanation, including legal authority.

Section 3.

Those seeking public records will be charged only the actual cost of making copies.

Section 3.1 The charge for paper copies is 8 cents per page.

Section 3.2 The charge for downloaded computer files to a compact disc or other storage device is the cost of the disc.

Section 3.3 There is no charge for documents e-mailed.

Section 3.4 Requesters may ask that documents be mailed to them. They will be charged 8 cents per page, or the cost of the computer disc, as well as, the actual cost of the postage and mailing supplies.

Section 4.

Documents in electronic mail format are records as defined by the Ohio Revised Code when their content relates to the business of the office.

Section 4.1

Records in individual e-mail folders used to conduct LCLRC business are subject to disclosure, and all employees or representatives of LCRLC have been instructed to retain their e-mails that relate to public business (see Section 1 Public Records) and to copy them to their business e-mail folders and/or to the LCLRC records custodian.

Section 4.2

The LCLRC will treat e-mails from private folders generated while conducting LCLRC business are defined as records of the LCLRC and will be filed and retained appropriately under retention schedules. These e-mails will be made available for inspection and copying in accordance with the Public Records Act.

Section 5.

The LCLRC recognizes there are legal and non-legal consequences of failing to properly respond to a public records request. The LCLRC understands that failure to comply with a public records request may result in a court ordering the LCLRC to comply with the law and to pay the requester's attorney fees, damages and court costs.