

# PUBLIC RECORDS

A Brief Overview for New Members  
November 21, 2024



# OVERVIEW

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- What are public records?
- What are confidential legislative documents?
- How do you respond to a public records request?

# HISTORY OF OPENNESS

- Ohio has a long history of encouraging open government
- Ohio Constitution (Art. II, Sec. 13)

*[T]he proceedings of both houses shall be public, except in cases which, in the opinion of two-thirds of those present, require secrecy.*

- General Assembly sessions and committee hearings are open to the public

# HISTORY OF OPENNESS

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- Beyond Ohio, a tradition of openness has continued in both the common law (decisions of courts) and statute.
- In 1913, Justice Louis Brandeis wrote that making government records open to the public reduced the opportunities for corruption and abuse.



# WHAT ARE PUBLIC DOCUMENTS?

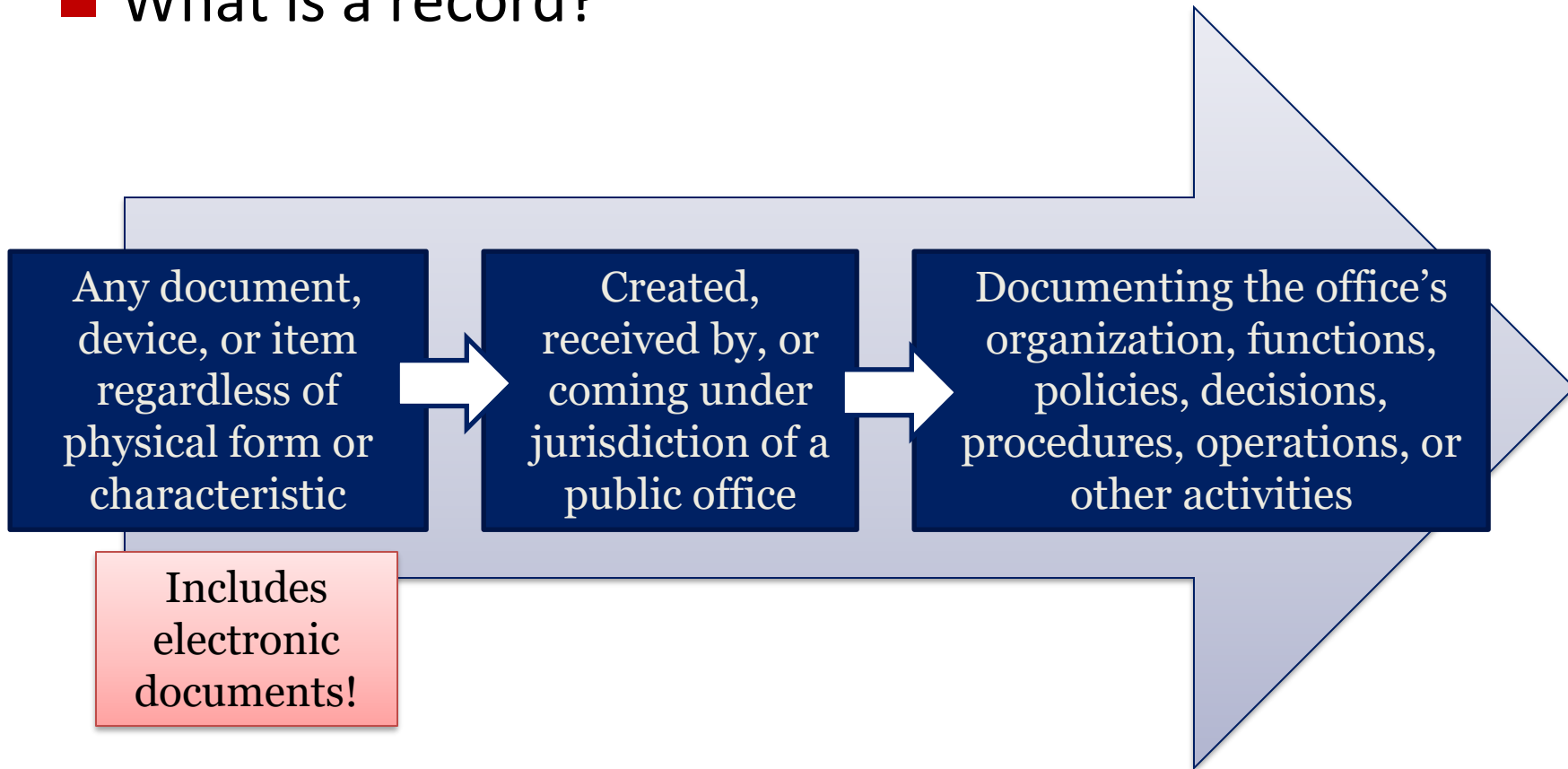
# WHAT IS A PUBLIC RECORD?

- Record kept by any public office.
- But what does that mean?



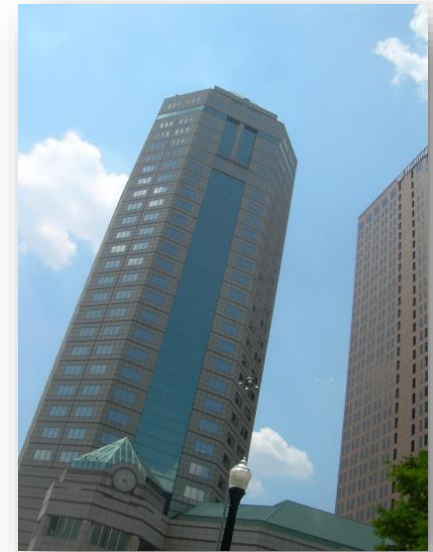
# BREAKING IT DOWN

## ■ What is a record?



# WHAT IS A PUBLIC OFFICE?

- Includes any state agency, public institution, or organized body or office established for the exercise of any function of government





# COMMON PUBLIC RECORDS FOR MEMBERS

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- Introduced bill
- Public fiscal note, bill analysis, or other public LSC document
- Date book or computerized schedule
- Constituent letter
- Letters or memos used within the office, formal or hand-written



# RECORDS THAT ARE NOT PUBLIC

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- Personal items that do not document a function or activity of the office
- Personal emails or notes
- Personal schedule or grocery list

# EXCEPTIONS TO THE PUBLIC RECORDS LAW

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- There are certain exceptions (medical records, intellectual property, etc.).
- But, the laws are meant to encourage openness.
- Courts interpret exceptions strictly – meaning, if there is a doubt, decisions are almost always made in favor of disclosure.



# LEGISLATIVE DOCUMENTS

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- One significant exception to the Public Records Law applies to legislators – the confidentiality of legislative documents.
- The Revised Code creates a confidential relationship between legislative staff and members and staff of the General Assembly.



# LEGISLATIVE DOCUMENTS

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- Legislative documents – documents arising out of the confidential relationship – are not a public record.
- Once you've taken the oath of office in January, any communications you or your staff has with LSC, or any agencies within LSC's budget group, will become confidential.

# WHAT ARE LEGISLATIVE DOCUMENTS?

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- Working paper
- Work product
- Correspondence
- Preliminary draft
- Proposed bill
- Proposed amendment
- Analysis
- Memorandum
- Other document prepared by legislative staff for a G.A. member or G.A. staff

# WHAT DOES THIS MEAN?

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- If you request a bill draft, research memorandum, or other document from our office and we provide those to you or any communications relating to those documents, they will remain confidential.
- You can discuss ideas, request research, and propose bill and resolution drafts with LSC staff in confidence.



# WHEN DO LEGISLATIVE DOCUMENTS BECOME PUBLIC?

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- Legislative documents become a public record if G.A. member or staff:
  - Files it for introduction (bill or resolution)
  - Presents it at committee or a floor session (amendment or substitute bill)
  - Releases it to the public

# WHEN DO LEGISLATIVE DOCUMENTS BECOME PUBLIC?

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- Analysis, synopsis, fiscal note, or local impact statement become a public record if:
  - Required to be prepared by law or G.A. rule for the benefit of either House or any committee
  - Has been presented to those members



# RESPONDING TO RECORDS REQUESTS

# RESPONDING TO A REQUEST

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- “Any person” may make a request.
  - A public records request does not need to be in writing.
  - A request does not need to identify the person making it.
- The request must be for the public office’s existing records.

# RESPONDING TO A REQUEST

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- If you receive a records request for certain documents:
  - If the documents are public records, they must be promptly prepared and made available for inspection by any person at all reasonable times during regular business hours.
  - Copies must be made available at cost within a reasonable amount of time.

# RESPONDING TO A REQUEST

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- Even if the request is for a confidential document, you cannot just ignore it.
  
- General steps would include:
  - Compiling all records related to the request;
  - Determining which of those records are public; and
  - Providing the records to the requester or denying the request.

# RESPONDING TO A REQUEST

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- Within a reasonable period of time, you either have to give the requestor the document, or you have to explain why the record is confidential.
- A public office has the burden of proving that a record is confidential.
  - If a public record contains some exempt information, the public office must redact the exempt information and release the remaining information.