

# The Ohio Public Records Act

## Chapter Six: Special Topics

release of a record.<sup>615</sup> The danger must be self-evident; bare allegations or assumed conclusions that a person's physical safety is threatened are not sufficient reasons to redact information.<sup>616</sup> Alleging that disclosing the information would infringe on a person's privacy does not justify a denial of release under this exception.<sup>617</sup>

**Note: Non-expiring Step Two exceptions:** When a law enforcement matter has concluded, only the work product exception expires. The courts have expressly or impliedly found that investigatory records which fall under the uncharged suspect,<sup>618</sup> confidential source or witness,<sup>619</sup> confidential investigatory technique,<sup>620</sup> and information threatening physical safety<sup>621</sup> exceptions apply despite the passage of time.

**Note: Law Enforcement Records not Covered by the CLEIRs Exception:** As noted above, personnel and other administrative records not pertaining to a law enforcement matter would not be covered by the CLEIRs exception. In addition, the courts have specifically ruled that the following records are not covered:

**Offense and Incident Reports:** Offense-and-incident reports are form reports in which the law enforcement officer completing the form enters information in the spaces provided.<sup>622</sup> Police offense or incident reports initiate investigations, but are not considered part of the investigation, and are therefore not a "law enforcement matter" covered by the CLEIRs exception.<sup>623</sup> Therefore, none of the information explained in Step Two above can be redacted from an initial incident report.<sup>624</sup> However, if an offense or incident report contains information that is otherwise exempt from disclosure under state or federal law, the exempt information may be redacted.<sup>625</sup>

**911 Records:** Audio records of 911 calls are not considered to pertain to a "law enforcement matter," or constitute part of an investigation, for the purposes of the CLEIRs exception.<sup>626</sup> Further, the courts have determined that a caller has no reasonable expectation of privacy in matters communicated in a 911 call, and since there is no basis to find a constitutional right of privacy in such calls, even Social Security Numbers may not be redacted.<sup>627</sup> As with other public records, a requester is entitled to access either the audio record, or a paper transcript.<sup>628</sup> However, information concerning telephone numbers, addresses, or names obtained from a 911 database maintained

<sup>615</sup> R.C. 149.43(A)(2)(d); see *State ex rel. Martin v. City of Cleveland*, 67 Ohio St.3d 155, 156, 1993-Ohio-192 (finding that a document does not need to specify within the four corners the promise of confidentiality or threat to physical safety).

<sup>616</sup> See e.g., *State ex rel. Johnson v. City of Cleveland*, 65 Ohio St.3d 331, 333-34 (1992) (overruled on other grounds).

<sup>617</sup> See e.g., *State ex rel. Johnson v. City of Cleveland*, 65 Ohio St.3d 331, 333-334 (1992).

<sup>618</sup> *State ex rel. Polovischak v. Mayfield*, 50 Ohio St.3d 51, 54 (1990) (providing that "[o]ne purpose of the exemption in R.C. 149.43(A)(2) is to protect a confidential informant" and that "[t]his purpose would be subverted if a record (in which the informant's identity is disclosed) were deemed subject to disclosure simply because a period of time had elapsed with no enforcement action") (parentheses original).

<sup>619</sup> R.C. 149.43(A)(2)(d); see *State ex rel. Martin v. City of Cleveland*, 67 Ohio St.3d 155, 156, 1993-Ohio-192 (finding that a document does not need to specify within the four corners the promise of confidentiality or threat to physical safety).

<sup>620</sup> *State ex rel. Broom v. Cleveland*, 8th Dist. No. 59571 (Aug. 27, 1992).

<sup>621</sup> *State ex rel. Martin v. City of Cleveland*, 67 Ohio St.3d 155, 1993-Ohio-192.

<sup>622</sup> *State ex rel. Lanham v. Smith*, 112 Ohio St.3d 527, 2007-Ohio-609, ¶13 ("See, e.g., *State ex rel. Beacon Journal Publishing Co. v. Maurer* (2001), 91 Ohio St.3d 54, 2001 Ohio 282, 741 N.E.2d 511 (referring to an "Ohio Uniform Incident Form").").

<sup>623</sup> *State ex rel. Lanham v. Smith*, 112 Ohio St.3d 527, 2007-Ohio-609, ¶13; *State ex rel. Beacon Journal Publ'g Co. v. City of Akron*, 104 Ohio St.3d 339, 2004-Ohio-6557, ¶55; *State ex rel. Beacon Journal Publ'g Co. v. Maurer*, 91 Ohio St.3d 54, 57, 2001-Ohio-282 (explaining its ruling by noting that it ruled the way it did "despite the risk that the report may disclose the identity of an uncharged suspect.").

<sup>624</sup> *State ex rel. Beacon Journal Publ'g Co. v. Maurer*, 91 Ohio St.3d 54, 57, 2001-Ohio-282.

<sup>625</sup> *State ex rel. Lanham v. Smith*, 112 Ohio St.3d 527, 2007-Ohio-609, ¶13; *State ex rel. Beacon Journal Publ'g Co. v. City of Akron*, 104 Ohio St.3d 339, 2004-Ohio-6557, ¶55 (explaining that "in *Maurer*, we did not adopt a per se rule that all police offense and incident reports are subject to disclosure notwithstanding the applicability of any exemption.").

<sup>626</sup> *State ex rel. Dispatch Printing Co. v. Morrow County Prosecutor's Office*, 10 Ohio St.3d 172, 2005-Ohio-685.

<sup>627</sup> *State ex rel. Cincinnati Enquirer v. Hamilton County*, 75 Ohio St.3d 374, 377, 1996-Ohio-214 (holding that 911 tapes at issue had to be released immediately).

<sup>628</sup> *State ex rel. Dispatch Printing Co. v. Morrow County Prosecutor's Office*, 10 Ohio St.3d 172, 2005-Ohio-685, ¶5.