



OHIO LEGISLATIVE SERVICE COMMISSION

Final Analysis

Emily E. Wendel

Sub. H.B. 425

132nd General Assembly
(As Passed by the General Assembly)

- Reps.** Antani and Craig, Becker, Seitz, Sheehy, Lang, Anielski, Arndt, Barnes, Brown, Celebrezze, Cupp, Dever, Duffey, Fedor, Gavarone, Ginter, Gonzales, Green, Hagan, Hambley, Henne, Holmes, Hoops, Howse, Hughes, Ingram, Kent, Kick, Landis, Leland, Lepore-Hagan, Manning, Miller, O'Brien, Patterson, Patton, Perales, Ramos, Reece, Reineke, Rezabek, Riedel, Roegner, Rogers, Ryan, Schaffer, Scherer, Schuring, K. Smith, Stein, Sykes, West, Wiggam, Wilkin, Young
- Sens.** Coley, Uecker, Beagle, Hackett, Hoagland, Hottinger, Kunze, Oelslager, Peterson, Schiavoni, Tavares, Terhar, Thomas, Wilson, Yuko

Effective date: April 8, 2019

ACT SUMMARY

Application of Public Records Law to law enforcement camera recordings

- Provides that a recording from a law enforcement body-worn or dashboard camera is a public record, subject to certain exceptions.
- Exempts certain recordings from a law enforcement body-worn or dashboard camera from disclosure under the Public Records Law based on the content of the recording.
- Allows certain restricted recordings from a law enforcement body-worn or dashboard camera to be released by consent of the subject of the recording or that person's representative.
- Allows any person whose public records request for a law enforcement body-worn or dashboard camera recording has been denied to file a mandamus action requesting the court to order the release of all or portions of the recording.

Public school infrastructure records

- Excludes an infrastructure record of a public school from mandatory release under the Public Records Law.

Protection orders

- Requires a court to seal, instead of expunge, an *ex parte* juvenile court or civil protection order if the court refuses to grant a protection order after a full hearing.
- Clarifies the provisions of law that require any appeals to be completed before the court orders the sealing of such an *ex parte* order.
- Eliminates the requirement that a court expunge an *ex parte* criminal protection order if the court ultimately revokes the order.

Record sealing and expungement pilot program

- Eliminates a pilot program that created a procedure for removing sealed or expunged criminal records from databases, websites, and publications, upon notice of court orders sent to a qualified third party.

CONTENT AND OPERATION

Application of Public Records Law to law enforcement camera recordings

Ohio's Public Records Law generally requires a public office to make its records available to the public upon request. However, under continuing law, several types of records are not subject to disclosure as public records, including confidential law enforcement investigatory records. The act addresses the public records status of recordings from law enforcement body-worn and dashboard cameras, which were not specifically contemplated under prior law. Those recordings are considered public records, except as discussed below. Under the act, a "body-worn camera" is a visual and audio recording device worn by a peace officer while on duty. A "dashboard camera" is a visual and audio recording device mounted on a peace officer's vehicle or vessel that is used while the peace officer is on duty.¹

Restricted recordings exempt from disclosure

Under the act, any visual or audio portion of a law enforcement body-worn camera or dashboard camera recording that shows, communicates, or discloses any of

¹ R.C. 149.43.



the following is considered restricted and is exempt from disclosure under the Public Records Law:²

- The image or identity of a child or information that could lead to the identification of a child who is a primary subject of the recording when the law enforcement agency knows or has reason to know the person is a child based on the agency's records or the content of the recording.
- The death of a person or a deceased person's body, unless the death was caused by a peace officer or unless the person's executor or administrator consents to the release.
- The death of a peace officer, firefighter, paramedic, or other first responder that occurs while the person is on duty, unless the person's executor or administrator consents to the release.
- Grievous bodily harm, unless the injury was caused by a peace officer or unless the injured person or the injured person's guardian consents to the release. (As used in the act, "grievous bodily harm" means serious bodily injury, including fractured or dislocated bones, deep cuts, torn ligaments, and serious damage to internal organs.³)
- An act of severe violence against a person that results in serious physical harm to the person, unless the act and injury was caused by a peace officer or unless the person or the person's guardian consents to the release.
- Grievous bodily harm to a peace officer, firefighter, paramedic, or other first responder that occurs while the person is on duty, unless the person or the person's guardian consents to the release.
- An act of severe violence resulting in serious physical harm against a peace officer, firefighter, paramedic, or other first responder that occurs while the person is on duty, unless the person or the person's guardian consents to the release.
- A person's nude body, unless the person consents to the release.
- Protected health information (as defined in federal regulations),⁴ the identity of a person in a health care facility who is not the subject of a law

² R.C. 149.43(A)(15).

³ R.C. 5924.120(A)(6), not in the act.

⁴ 45 C.F.R. 160.103.



enforcement encounter, or any other information in a health care facility that could identify a person who is not the subject of a law enforcement encounter.

- Information that could identify the alleged victim of a sex offense, menacing by stalking, or domestic violence. "Sex offense" includes rape, sexual battery, unlawful sexual conduct with a minor, gross sexual imposition, sexual imposition, importuning, voyeurism, and public indecency.⁵
- Information that could identify a person who provides sensitive or confidential information to a law enforcement agency when the disclosure of the person's identity or the information provided could reasonably be expected to threaten or endanger the safety or property of the person or another person. (This category does not include information that constitutes a confidential law enforcement investigatory record because that information is exempt from disclosure under a separate provision of continuing law.)
- Personal information of a person who is not arrested, cited, charged, or issued a written warning by a peace officer, such as any government-issued identification number, date of birth, address, financial information, or criminal justice information from the law enforcement automated data system (LEADS) or similar databases.
- Proprietary police contingency plans or tactics that are intended to prevent crime and maintain public order and safety.
- A personal conversation unrelated to work between peace officers or between a peace officer and an employee of a law enforcement agency.
- A conversation between a peace officer and a member of the public that does not concern law enforcement activities.
- The interior of a residence, unless it is the location of an adversarial encounter with, or a use of force by, a peace officer.
- Any portion of the interior of a private business that is not open to the public, unless it is the location of an adversarial encounter with, or a use of force by, a peace officer.

In all cases mentioned above in which a restricted recording may be released with the consent of the recording's subject or that person's representative, the recording

⁵ R.C. 2907.10, not in the act.



may be released to the public only if the recording will not be used in connection with any probable or pending criminal proceedings or if the recording has been used in connection with a criminal proceeding that resulted in a dismissal or sentencing and will not be used again in connection with any probable or pending criminal proceedings. However, if a criminal defendant requests a restricted recording as part of the person's case, under continuing law, that request is treated as a discovery demand under the Ohio Rules of Criminal Procedure instead of a public records request, and the Rules determine whether the defendant is entitled to receive the recording. The Rules allow a party to a case to receive many types of records that may be exempt from disclosure as public records.⁶

Mandamus action to compel disclosure

If a public office denies a person's request for a restricted portion of a law enforcement body-worn or dashboard camera recording, the act allows the person to request a court to order the release of all or portions of the recording. The person may file a mandamus action under the Public Records Law using the continuing law procedure, or the person may file a complaint in the Court of Claims. If the court determines that the person has shown by clear and convincing evidence that the public interest in the recording substantially outweighs privacy interests and other interests asserted to deny its release, the court must order the public office to release the recording.⁷

Public school infrastructure records

The act excludes an infrastructure record of a public school from mandatory release under the Public Records Law. Continuing law exempts infrastructure records concerning public offices and nonchartered public schools from disclosure as public records. An "infrastructure record" is any record that discloses the configuration of critical systems, including communication, computer, electrical, mechanical, ventilation, water, and plumbing systems, security codes, or the infrastructure or structural configuration of a building. The term also includes a risk assessment of infrastructure performed by a law enforcement agency. But, it does not include a simple floor plan that discloses only the spatial relationship of components of the building.⁸

⁶ R.C. 149.43(H)(1) and (G).

⁷ R.C. 149.43(H)(2).

⁸ R.C. 149.433.



Protection orders

Background

Continuing law allows a victim of stalking or domestic violence to apply to a court for any of the following types of protection orders:

- A juvenile court protection order against a person under 18;
- A criminal stalking protection order involving a person other than a family or household member when a criminal complaint has been filed against the person;
- A criminal domestic violence temporary protection order involving a family or household member when a criminal complaint has been filed against the person;
- A civil stalking protection order involving any person;
- A civil domestic violence protection order or consent agreement involving a family or household member or person in a dating relationship.

In general, the person against whom a protection order is sought has the right to attend the hearing on the order. However, under certain circumstances, the Revised Code allows the court to hold a hearing and issue a temporary protection order without the person who is the subject of the order being present or notified of the proceeding. (The law refers to these proceedings as *ex parte*.) The court later must hold a full hearing, of which the person has been notified. The act makes changes to the procedures that apply after the full hearing if the court ultimately denies the protection order.

Juvenile court and civil protection orders

In the case of a juvenile court protection order or a civil stalking or domestic violence protection order, if the court initially grants an *ex parte* protection order but, after a full hearing, refuses to grant a protection order, the act requires the court to order that the *ex parte* order and all of the records pertaining to it be sealed instead of expunged, as required under prior law. Under continuing law, expunged records are destroyed or deleted so that they are permanently irretrievable, while sealed records are made unavailable to the public but are still accessible to certain persons authorized by law, such as prosecutors and law enforcement agencies.



Further, the act clarifies the provisions of law that require any appeals to be completed before the court orders the sealing of an *ex parte* order. Under the act, the court may order the sealing only after one of the following occurs:⁹

- No party has exercised the right to appeal pursuant to Rule 4 of the Rules of Appellate Procedure. (Prior law allowed the sealing to occur only after the period of the notice of appeal from the order that refused to grant a protection order had expired.)
- All appellate rights have been exhausted. (Prior law allowed the sealing to occur only after the order that refused to grant the protection order was appealed and an appellate court to which the last appeal of that order was taken affirmed the order.)

Criminal protection orders

The act also eliminates the requirement that, when a court determines that an *ex parte* criminal stalking or domestic violence protection order should be revoked, the court must order that the revoked *ex parte* order and all of the records pertaining to it be expunged.¹⁰

Record sealing and expungement pilot program

Finally, the act eliminates a record sealing and expungement pilot program that was established in the main operating budget of the 132nd General Assembly to operate through September 29, 2018.¹¹ The pilot program was to create a procedure to remove sealed or expunged criminal records from databases, websites, and publications following the court's issuance of an order to seal or expunge. The pilot procedure involved sending notices of the orders to a qualified third party selected by the Attorney General, and the third party notifying data repositories, websites, and publications to remove the records. The person applying to have records sealed or expunged was required to pay a fee for notifying the third party, but was allowed to opt out.¹²

⁹ R.C. 2151.34, 2903.214, and 3113.31.

¹⁰ R.C. 2903.213 and 2919.26.

¹¹ Am. Sub. H.B. 49 of the 132nd General Assembly.

¹² R.C. 109.38, 109.381, 2953.32, 2953.37, 2953.38, and 2953.53.



HISTORY

ACTION	DATE
Introduced	11-21-17
Reported, H. Gov't Accountability & Oversight	05-22-18
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