

RESOLUTION NO. 10-4-07

The Board of Trustees of Canton Township, Stark County, Ohio met in regular session on the 09th day of October, 2007, with the following members present:

Christopher B. Nichols

James Wilcox

William C. Smith

Mr. Nichols moved the adoption of the following resolution:

WHEREAS, effective September 29, 2007, House Bill 9 amended Ohio Revised Code section 149.43, et. seq., the Ohio Public Records Act, to require every Ohio political subdivision to adopt a public records policy, to require all elected officials or their designees to attend public records training and to cause public notification of the public records policy; and,

WHEREAS, the Canton Township Board of Trustees, upon recommendation of its additional legal counsel, and upon review and due consideration does hereby adopt the following PUBLIC RECORDS POLICY and does further designate the Canton Township Fiscal Officer, the Canton Township administrative staff, the Canton Township Fire Chief, Road Superintendent, Zoning Inspector and any administrative employee having custody or daily responsibility of any public record, as public records compliance designees; and,

NOW, THEREFORE, BE IT RESOLVED, that the Board of Trustees for Canton Township Stark County, Ohio, does hereby adopt the:

**PUBLIC RECORDS POLICY OF
CANTON TOWNSHIP, STARK COUNTY**

Introduction:

It is the policy of Canton Township in Stark County that openness leads to a better informed citizenry, which leads to more transparent government and a more sound public policy. It is our policy to strictly adhere to the state's Public Records Act as well as other state and federal laws.

Ohio's Public Records Act imposes two primary obligations upon public offices:

1. Provide prompt inspection of public records (R.C. 149.43(B)(1)); and
2. Provide copies of public records within a reasonable period of time (R.C. 149.43(B)(2)).

The Public Records Act evolved from the principle that Ohio's citizens are entitled to access the records of their government. We agree that to advance that principle, the Public Records Act should be interpreted liberally in favor of disclosure.

Section 1. Public records

Under Ohio law, a public office may only create records that are necessary for the adequate and proper documentation of the organization, functions, policies, decisions, procedures and essential transactions of the agency and for the protection of the legal and financial rights of the state and persons directly affect by the agency's activities. (R.C. 149.40).

In accord with the Ohio Revised Code and court rulings, "records" are defined as those items that meet all of the following:

1. any document, device, or item, regardless of physical form or characteristic, including an electronic record (which includes but is not limited to e-mail or other record created, generated, sent, communicated, received, or stored by electronic means);
2. that is created or received by, or coming under the jurisdiction of a public office; and
3. that documents the organization, functions, policies, decisions, procedures, operations, or other activities of the office. (R.C. § 149.011(G)).

The determination of whether a specific item constitutes a "record" will depend on the facts and circumstances surrounding the particular item requested. The Ohio Courts have imposed an actual use standard in defining a "record," which means that an item is not automatically a "record" simply because the public office could (but did not) use a document it received to carry out its duties and responsibilities.

Furthermore, a public office is not required to create new records to respond to a public records request, even if it is only a matter of compiling information from existing records.

Section 1.1

It is the policy of Canton Township in Stark County that, as required by Ohio law, records will be organized and maintained so that they are made available for inspection to any person at all reasonable times during regular business hours. (R.C. 149.43(B)(1)).

Copies will be made available upon request within a reasonable period of time. (R.C. 149.43(B)(1)).

A current record retention schedule will be readily available to the public upon request. (R.C. 149.43(B)(2))

Section 1.2

Not all of Canton Township's records are "public records." Certain records are exempt from the Public Records Act. Exempt records include records: (1) the release of which is *prohibited* by state or federal law, or 2) that are subject to an express exception set forth in Ohio's Public Records Act, which may be released only if the Canton Township Board of Trustees, Stark County, decides to waive the express exception.

Examples of records, the release of which is *prohibited* by state or federal law, include, but are not limited to, the following:

Attorney-client privileged information;

Records of a Certified Public Accountant or public accountant in the performance of an audit of a public office (R.C. 4701.19(B));

Federal tax returns (26 U.S.C. 6103(a));

Criminal background information and other law enforcement information on the LEADS/CCH/NCIC computer database (42 U.S.C. 3789g);

Records that have been sealed pursuant to a statutorily authorized court order (*i.e.* R.C. 2953.52);

Peace officer's home address during the pendency of a criminal case in which the officer is a witness or arresting officer (R.C. 2921.24(A)); and

Employees' and their family members records that were created for purposes of the Family Medical Leave Act or the Americans with Disabilities Act (29 CFR 825.500(g) and 1630.14(c)(1)).

Examples of records that are subject to an express exception set forth in Ohio's Public Records Act, which may be released only if the Canton Township Board of Trustees, Stark County, decides to waive the express exception include, but are not limited to, the following:

Peace Officer, firefighter, EMT, prosecutor, assistant prosecutor, children's services worker, or corrections officer, Residential and Familial Information (R.C. 149.43(A)(7));

Records that pertain to a patient's medical history, diagnosis, prognosis, or medical condition and that were general and maintained in the process of medical treatment (R.C. 149.43(A)(1)(a));

Records that contain information that was specifically compiled in reasonable anticipation of, or in defense of, a civil or criminal action or proceeding (R.C. 149.43(A)(1)(g)); and

Section 2.3

Public records should be available for inspection at all reasonable times during regular business hours. Public records should be made available for inspection promptly. (R.C. 149.43(B)(1). To the extent that an office may operate 24-hours-a-day, the records of that office will be made available for inspection during normal administrative hours.

Copies of public records should be made available within a reasonable period of time. (R.C. 149.43(B)(1)).

The determination of the terms “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.

Section 2.4

Each request should be evaluated for an estimated length of time required to gather the records. Routine requests for records should be satisfied immediately if feasible to do so. Routine requests include, but are not limited to, meeting minutes, both in draft and final form, resolutions, budgets, etc.

Section 2.5

Upon request, this office will provide copies of public records to a requester by United States mail or by any other delivery means or transmission that this office deems reasonable. (R.C. 149.43(B)(7)).

This office will limit to ten the number of copies of public records provided per month to a requester by United States Mail, unless the requester certifies in writing that he/she does not intend to use or forward the requested records, or the information contained in them, for commercial purposes. The word “commercial” should be narrowly construed and does not include reporting or gathering news, reporting or gathering information to assist citizen oversight or understanding of the operation or activities of government, or nonprofit educational research. (R.C. 149.43(B)(7)).

Section 2.6

By Ohio law, this office is not required to permit a person who is incarcerated pursuant to a criminal conviction or a juvenile adjudication to inspect or to obtain a copy of any public record concerning a criminal investigation or prosecution or concerning what would be a criminal investigation if the subject of the investigation or prosecution were an adult, unless the judge who imposed the sentence or made the adjudication with respect to the person, or the judge’s successor in office, finds that the information sought in the public record is necessary to support what appears to be a justifiable claim of the person. R.C. 149.43(B) (8).

Section 2.7

This office, in response to a written request made and signed by a journalist, which must include the journalist's name and title and the name and address of the journalist's employer and which states that the disclosure of the information sought would be in the public interest, will provide the address of the actual personal residence of anyone employed by this office as a peace officer, firefighter, EMT, prosecutor, assistant prosecutor, children's services worker, or corrections officer, and, if such employee's spouse, former spouse, or child is employed by a public office, the name and address of that public office. (R.C. 149.43(B)(9)).

Section 2.8

Any denial of public records requested, in part or in whole, should include an explanation, including legal authority, as to why the request was denied. If the initial request was provided in writing, the explanation for denial will be provided to the requester in writing. (R.C. 149.43(B)(3)).

If portions of a record are public and portions are exempt, the exempt portions should be redacted and the rest released. If there are redactions, the office will notify the requester of any redaction or make the redaction plainly visible. Each redaction should be accompanied by a supporting explanation, including legal authority, as to why the redaction was made. (R.C. 149.43(B)(1) and (2)).

Section 2.9

This office has no duty to provide records acquired after a request for records is complete.

Section 3. Costs for Public Records

Those seeking public records should be charged only the actual cost of making copies, unless the cost is otherwise set by statute. (R.C. 149.43(B)(1)). Employee time should not be calculated into the charge for copying a public record. However, in the event that circumstances make it reasonable for this office to hire an outside contractor to make copies of requested records, the requester will be charged the actual cost paid to the outside contractor for the copying service. (R.C. 149.43(F)(2)(a)). These circumstances may include but not be limited to a lack of in-house photocopying resources or labor.

This office has no duty to provide copies of public records free of charge to someone who indicates an inability or unwillingness to pay for them.

Section 3.1 The charge for paper copies is the first five are free and then five cents (\$0.05) per page thereafter.

Section 3.2

This office may require a requester to pay in advance the cost involved in providing the copy of the public record, as requested. (R.C. 149.43(B)(6)).

Section 3.3

Upon request, this office will provide copies of public records to a requester by United States mail or by any other delivery means or transmission that this office deems reasonable. This office may require such a requester to pay in advance the cost of postage or costs incurred for other supplies used in the mailing, delivery, or transmission. (R.C. 149.43(B)(7)).

Section 3.4

There may be instances when this office may be able to provide copies made in-house without disrupting its normal functions, but only over an extended period of time. In that instance, this office may offer the requester the options of (1) having the documents produced through a faster method by employing temporary personnel and equipment, (2) using an external private contractor, or (3) having the documents produced in-house by this public office's normal staff and equipment in a less efficient and more time-consuming manner.

Section 4. Failure to respond to a public records request

This office recognizes the legal and non-legal consequences of failure to properly respond to a public records request. In addition to the distrust in government that failure to comply may cause, this office's failure to comply with a request may result in the requester commencing a mandamus action against this office in either the court of common pleas, in the court of appeals, or in the Supreme Court of Ohio. The court may order this office to comply with the Public Records Act, as well as order this office to pay statutory damages of one hundred dollars for each business day, beginning with the day the requester files the mandamus action, during which this public office failed to comply, up to a maximum of one thousand dollars, as well as court costs and the requester's reasonable attorney fees.

BE IT FURTHER RESOLVED, that the Board does hereby designate the Canton Township Fiscal Officer, the Canton Township administrative staff, the Canton Township Fire Chief, Road Superintendent, Zoning Inspector and any administrative employee having custody or daily responsibility of any public record, as public records compliance designees; and,

BE IT FURTHER RESOLVED, that the Board does hereby direct the Canton Township Fiscal Officer to do all things necessary to comply with the additional requirements of ORC 149.43 (E), including: (1) distributing the policy to each Canton Township public records custodian or compliance designee and obtaining an acknowledgement of receipt of that policy;

(2) create and post in the Canton Township Administrative Office, and all branches, a poster describing the public records policy; (3) to include the public records policy on the Board's internet website; (4) to include the public records policy in any employee handbook and in any manual of general township policies and procedures; and (5) to notify each Canton Township elected official and their designees of the availability of training approved by the Ohio Attorney General as provided in ORC 109.43.

Mr. Wilcox seconded the motion and upon roll call, the vote resulted as follows:

CHRISTOPHER NICHOLS	<u>YES</u>
JAMES WILCOX	<u>YES</u>
WILLIAM SMITH	<u>YES</u>

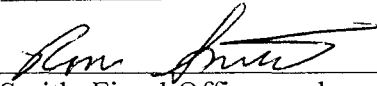
ADOPTED: October 09, 2007.

CERTIFICATE OF CLERK

State of Ohio)
) ss:
County of Stark)

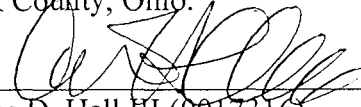
I, Ron Smith, Fiscal Officer and Clerk of the Board of Trustees of Canton Township, Stark County, Ohio, in whose custody and control the files and records of said Board are required by the laws of the State of Ohio to be kept, do hereby certify that the foregoing is taken and copied from the original resolution now on file, and that the foregoing has been compared by me with said original resolution, and that the same is a true and correct copy thereof.

WITNESS my signature this 09th day of October, 2007.



Ron Smith, Fiscal Officer and
Clerk of the Board of Trustees of
Canton Township, Stark County, Ohio

APPROVED AS TO FORM AND LEGAL SUFFICIENCY by Charles D. Hall III,
Additional Legal Counsel, Canton Township, Stark County, Ohio.

 10/09/2007

Charles D. Hall III (0017316)