

# OHIO SUNSHINE LAW



# OHIO SUNSHINE LAW

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# OHIO SUNSHINE LAW

**Public Records Act**  
(R.C. 149.43)  
**Open Meetings Act**  
(R.C. 121.22)

# OHIO SUNSHINE LAW

*– The Founding Fathers –*

*“Information is the currency of democracy.”*

*– Thomas Jefferson*

# OHIO SUNSHINE LAW

*– Other Notable Quotes –*

*“Democracies die behind closed doors. . . .  
When government begins closing doors, it  
selectively controls information rightfully  
belonging to the people. Selective information is  
misinformation. . . .*

*– Detroit Free Press v. Ashcroft,  
303 F.3d 681 (6th Cir. 2002)*

# OHIO SUNSHINE LAW

*– Other Notable Quotes –*

*“. . . Direct knowledge of how [our]  
government is operating enhances the public's  
ability to affirm or protest government's efforts.  
When government selectively chooses what  
information it allows the public to see, it can  
become a powerful tool for deception. . . .*

*– Detroit Free Press v. Ashcroft,  
303 F.3d 681 (6th Cir. 2002)*

# OHIO SUNSHINE LAW

## – Other Notable Quotes –

*“... [G]overnment operating in the shadow of secrecy stands in complete opposition to the society envisioned by the Framers of our Constitution . . . .”*

– *Detroit Free Press v. Ashcroft*,  
303 F.3d 681 (6th Cir. 2002)

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# PUBLIC RECORDS ACT – Fulfilling Our Duty As Citizens –

*As a responsible and involved citizenry, our duties include holding our government and public officials accountable.*

*Key to fulfilling this duty is to be fully and accurately informed.*

# PUBLIC RECORDS ACT – Fulfilling Our Duty As Citizens –

*Kish v. Akron*, 109 Ohio St.3d 162 (2006):

*“A fundamental premise of American democratic theory is that government exists to serve the people. In order to ensure that government performs effectively and properly, it is essential that the public be informed and therefore able to scrutinize the government’s work and decisions. . . .”*

# PUBLIC RECORDS ACT – Fulfilling Our Duty As Citizens –

*Kish v. Akron*, 109 Ohio St.3d 162 (2006):

*“... Public records are one portal through which the people observe their government, ensuring its accountability, integrity, and equity while minimizing sovereign mischief and malfeasance. Public records afford an array of other utilitarian purposes necessary to a sophisticated democracy: . . . .”*

# PUBLIC RECORDS ACT – Fulfilling Our Duty As Citizens –

*Kish v. Akron*, 109 Ohio St.3d 162 (2006):

*“[Public records] illuminate and foster understanding of the rationale underlying state decisions, promote cherished rights such as freedom of speech and press, and foster openness and . . . encourage the free flow of information where it is not prohibited by law.”*

## **PUBLIC RECORDS ACT** – Historical Perspective –

### *Common Law:*

Citizen access to governmental information was severely restricted:

- with the consent of the crown; or
- showing inspection was necessary to maintain or defend a legal action.

## **PUBLIC RECORDS ACT** – Overview –

*Dayton Newspapers v. Dayton*, 45 Ohio St.2d 107 (1976):

*“The rule in Ohio is that public records are the people’s records, and that the officials in whose custody they happen to be are merely trustees for the people . . . .”*

## **PUBLIC RECORDS ACT** – Overview –

*Dayton Newspapers v. Dayton*, 45 Ohio St.2d 107 (1976):

*“ . . . therefore anyone may inspect such records at any time, subject only to the limitation that such inspection does not endanger the safety of the record, or unreasonably interfere with the discharge of the duties of the officer having custody of the same.”*

## **PUBLIC RECORDS ACT** – What Is a Public Record –

“Public record” means “records kept by any public office . . . .” R.C. 149.43(A)(1)

“Record” includes “any document, device or item... created or received by or coming under the jurisdiction of any public office...which serves to document the organization, function, policies, decisions, procedures, or other activities of the office.” R.C. 149.011(G)

## **PUBLIC RECORDS ACT** – What Is a Public Record –

- (i) “kept” by a “public office”; and
- (ii) is a “document, device or item” that is
- (iii) “created or received by, or coming under the jurisdiction of a public office” that
- (iv) serves “to document the organization, function, policies, decisions, procedures, or other activities of the office”; and
- (v) is not exempted by the Public Records Act.

## **PUBLIC RECORDS ACT** – What Is a Public Record – “Public Office”

A public office “includes any state agency, public institution, political subdivision or other organized body, office, agency, instruction or entity established by the laws of this state for the exercise of any function government.”

R.C. 149.011(A)

## PUBLIC RECORDS ACT

### – What Is a Public Record – Private Entity as a “Public Office”

*“[P]rivate business does not open its records to public scrutiny merely by performing services on behalf of the state or a municipal government. It ought to be difficult for someone to compel a private entity to adhere to the dictates of the Public Records Act, which was designed by the General Assembly to allow public scrutiny of public offices, not of all entities that receive funds that at one time were controlled by the government.”*

State ex rel. Oriana House v. Montgomery, 110 Ohio St. 3d 346 (2006)

## PUBLIC RECORDS ACT

### – What Is a Public Record – Private Entity as a “Public Office”

*Presumption that private entity is not a public office absent a showing by clear and convincing evidence that the private entity is the functional equivalent of a public office.*

## PUBLIC RECORDS ACT

### – What Is a Public Record – Private Entity as a “Public Office”

*“Functional-equivalency test”: Factors to consider include:*

- (i) *whether the entity performs a governmental function;*
- (ii) *the level of government funding;*
- (iii) *the extent of government involvement or regulation; and*
- (iv) *whether the entity was created by the government or to avoid the requirements of the Public Records Act.*

## PUBLIC RECORDS ACT

### – What Is a Public Record – Private Entity as a “Public Office”

*Potential private entities that may be public office*

- *Ohio High School Athletic Association*
- *Ohio Township Association*
- *Ohio Municipal League*
- *Convention and Visitors Bureau*
- *Film Commission*
- *3CDC*

## PUBLIC RECORDS ACT

### – What Is a Public Record –

- (i) *“kept” by a “public office”; and*
- (ii) *is a “document, device or item” that is*
- (iii) *“created or received by, or coming under the jurisdiction of a public office” that*
- (iv) *serves “to document the organization, function, policies, decisions, procedures, or other activities of the office”; and*
- (v) *is not exempted by the Public Records Act.*

## PUBLIC RECORDS ACT

### – What Is a Public Record – “Kept”

*“Kept” is the past participle of “keep,” which in this context means “preserve,” “maintain,” “hold,” “detain,” or “retain or continue to have in one’s possession or power esp. by conscious or purposive policy.”*

State ex rel. Cincinnati Enquirer, Div. of Gannett Satellite Info. Network, Inc. v. Cincinnati Bd. of Ed., 99 Ohio St.3d 6 (2003)

## PUBLIC RECORDS ACT – What Is a Public Record – “Kept”

*State ex rel. Cincinnati Enquirer v. Cincinnati Bd. of Ed.*, 99 Ohio St.3d 6 (2003):

- materials provided to the board members while interviewing finalists for superintendent position were not “public records”
- the materials were returned to the finalists at the conclusion of the interview
- “Based on the language of R.C. 149.43(A)(1), the documents requested by the Enquirer *do not* constitute public records because neither the board nor [the private company with which it contract to assist the board in the search for a superintendent] *kept* the materials submitted during the interviews of those three finalists.”
- “Since the definition of ‘public records’ in R.C. 149.43(A)(1) unequivocally requires that the records be ‘kept’ by any public office, the requested materials are not public records.”

## PUBLIC RECORDS ACT – What Is a Public Record – “Kept”

*State ex rel. Findlay Publishing Co. v. Hancock Cty. Bd. of Comm’rs*, 80 Ohio St.3d 134 (1997):

- After county approved settlement agreement, the original and all copies returned to private attorney who had been provided for the county by insurance company.
- Supreme Court rejected county’s claimed that because the county no longer kept the settlement agreement, it was not subject to Public Records Act.
- The private attorney acted as the county’s agent and still had possession of the records; therefore the settlement agreement was subject to the Public Records Act.”

## PUBLIC RECORDS ACT – What Is a Public Record –

- “kept” by a “public office”; and*
- is a “document, device or item” that is*
- “created or received by, or coming under the jurisdiction of a public office” that*
- serves “to document the organization, function, policies, decisions, procedures, or other activities of the office”; and*
- is not exempted by the Public Records Act.*

## PUBLIC RECORDS ACT – What Is a Public Record –

*“document the organization, function, policies, decisions, procedures, or other activities of the office”*

- Ohio Supreme Court has construed this to include “anything a governmental unit utilizes to carry out its duties and responsibilities.”

**However:**

- The Public Records Act “does not define a ‘public record’ as any piece of paper on which a public officer writes something.”
- The Public Records Act does not “define ‘public record’ as any piece of paper received by a public office that *might* be used by that office.”

## PUBLIC RECORDS ACT – What Is a Public Record –

*“document the organization, function, policies, decisions, procedures, or other activities of the office”*

- “A trial judge’s personal handwritten notes made during the course of a trial are not public records. . . [S]uch notes are simply personal papers kept for the judge’s own convenience and not official records”
- unsolicited letters sent to a judge attempting to influence decision in sentencing in a criminal case are not public records. “Although [the judge] did not discard the letters, she never utilized the letters in her sentencing decision. Therefore, the letters are not subject to disclosure because they do not serve to document the organization, functions, policies, decisions, procedures, operations, or other activities” of the judge’s office.

## PUBLIC RECORDS ACT – What Is a Public Record –

- “kept” by a “public office”; and*
- is a “document, device or item” that is*
- “created or received by, or coming under the jurisdiction of a public office” that*
- serves “to document the organization, function, policies, decisions, procedures, or other activities of the office”; and*
- is not exempted by the Public Records Act.*

## **PUBLIC RECORDS ACT**

### **– What Is a Public Record –**

#### **Exemptions**

R.C. 149.43(A)(1)

“Public record” means “records kept by any public office . . . ‘Public record’ does not mean any of the following: . . .”

- 27 specifically listed statutory exemptions

## **PUBLIC RECORDS ACT**

### **– What Is a Public Record –**

#### **Exemptions**

Specifically-listed statutory exemptions include:

- Medical records
- Trial preparation records
- Confidential Law enforcement investigatory records
- Records the release of which is prohibited by state or federal law

## **PUBLIC RECORDS ACT**

### **– What Is a Public Record –**

#### **Exemptions**

- Statutory exemptions to public records are strictly construed in favor of disclosure.
- Burden of demonstrating the application of an exemption to a requested record is upon the government.

## **PUBLIC RECORDS ACT**

### **– Tendering a Proper Public Records Request –**

**Key Considerations in Preparing a Request:**

- *Request can be in writing or oral.*
- *Can seek to “inspect” records or to obtain “copies” of records*
- *Do not need to identify yourself.*
- *Do not have to declare the purpose of the request.*

## **PUBLIC RECORDS ACT**

### **– Tendering a Proper Public Records Request –**

**Key Considerations in Preparing a Request:**

- *Can request the medium in which copies will be produced – paper, the same medium in which the public record is maintained or any other medium which the public office determines it reasonably can be duplicated the records as an integral part of the normal operations of the public office.*

## **PUBLIC RECORDS ACT**

### **– Tendering a Proper Public Records Request –**

**Key Considerations in Preparing a Request:**

- *If copies are requested, the public office may require payment in advance for the cost involved in providing the copy.*
- *Costs which may be charged are the reasonable expenses of copy supplies; may not include the costs of personnel necessary to make or arrange for the copies.*

## PUBLIC RECORDS ACT

### Tendering a Proper Public Records Request

#### Key Considerations in Preparing a Request:

- *The Public Records Act deals with public records, NOT public questions.*
- *Governments have to produce public records if they exist; they DO NOT have to answer your questions or create a record that does not exist.*

## PUBLIC RECORDS ACT

### Tendering a Proper Public Records Request

#### Key Considerations in Preparing a Request:

- *Request should seek specific documents, not overly broad categories of records.*
  - *General request essentially seeking "complete duplication" of official's correspondence files is overbroad.*
  - *Seeking "all e-mails" is overbroad.*

## PUBLIC RECORDS ACT

### Tendering a Proper Public Records Request

#### Key Considerations in Preparing a Request:

*"If a requester makes an ambiguous or overly broad request or has difficulty in making a request for copies or inspection of public records . . . such that the public office . . . cannot reasonably identify what public records are being requested . . . the public office . . . may deny the request but shall provide the requester with an opportunity to revise the request by informing the requester of the manner in which records are maintained by the public office and accessed in the ordinary course of the public office's or person's duties."*

## PUBLIC RECORDS ACT

### Tendering a Proper Public Records Request

#### Key Considerations in Preparing a Request:

- *If you're seeking several categories of documents, break the request into several separate requests.*
- *Generally, attempt to couch the request in terms of "all records documenting . . ."*
  - *"all records documenting the impoundment any vehicles by the Cincinnati Police Department from May 15 to May 30, 2010"*
  - *"any logs (or similar record) documenting the activities of any officer assigned to District 1 during the period from May 15 to May 30, 2010"*

## PUBLIC RECORDS ACT

### – What Is a Public Record –

*"Public record" means "records kept by any public office . . ."* R.C. 149.43(A)(1)

*"Record" includes "any document, device or item... created or received by or coming under the jurisdiction of any public office...which serves to document the organization, function, policies, decisions, procedures, or other activities of the office."* R.C. 149.011(G)

## PUBLIC RECORDS ACT

### – Duties of Public Office –

#### Duties/Obligation:

- *Imposed upon both the "public office" and the "person responsible" for the public records.*
- *Inspection – must be provided "promptly".*
- *Copies – must be provided "within a reasonable period of time".*

## **PUBLIC RECORDS ACT** **– Response From Public Office –**

### **Duties/Obligation:**

- *Explanation of denial with legal authority.*
- *If request in writing, explanation must be in writing.*
- *Redaction of information constitutes a denial.*

## **PUBLIC RECORDS ACT** **– Litigation to Obtain Records –**

### **Public Records Lawsuit:**

- *Mandamus action to compel compliance with the law.*
- *Statutory damages available to requestor.*
  - *\$100 per day up to \$1,000, start on day of filing lawsuit.*
- *Initial request must in writing and either hand delivered or transmitted via certified mail.*

## **PUBLIC RECORDS ACT** **– Litigation to Obtain Records –**

### **Public Records Lawsuit:**

- *Attorney fees may also be awarded by the Court, if successful.*
- *Courts have required that the client-requestor "have paid or be legally obligated to pay" the fees.*

## **PUBLIC RECORDS ACT**



## **PUBLIC RECORDS ACT** **– Destruction of Records –**

### **R.C. 149.351(A):**

*"All records . . . shall not be removed, destroyed, mutilated, transferred, or otherwise damaged or disposed of, in whole or in part, except as provided by law or under the rules adopted by the records commissions . . ."*

## **PUBLIC RECORDS ACT** **– Destruction of Records –**

### **R.C. 149.351(B):**

*"Any person who is aggrieved by the removal, destruction, mutilation, or transfer of, or by other damage to or disposition of a record . . . or by threat of such removal, destruction, mutilation, transfer, or other damage to or disposition of such a record . . ." may commence an action in common pleas court for:*

## **PUBLIC RECORDS ACT** – Destruction of Records –

### **Legal Relief Available for Destruction of Records Lawsuit:**

- *Injunction against public officials.*
- *Civil forfeiture to the aggrieved person of \$1,000 per record, up to \$10,000.*
- *Attorney fees may also be awarded by the Court, if successful, but capped at amount of civil forfeiture.*

## **PUBLIC RECORDS ACT** – Destruction of Records –

### **City of Akron:**

- *Destroy time sheets for employees.*
- *Each time sheet was a separate “record”.*
- *860 time sheets destroy = \$860,000*
- *City had to issue bonds totaling \$985,000 to pay the judgment and associated expenses.*

## **PUBLIC RECORDS ACT** – Destruction of Records –

### **City of Bucyrus (Crawford County):**

- *Request for 911 tapes from 1994 to 1997.*
- *Tapes were reel-to-reel which were recorded over, thus the original recordings destroyed.*
- *11,292 records = \$11,292,000.*
- *Claim limited to 1,409 records = \$1.4 million.*
- *Case presently on appeal.*

## **PUBLIC RECORDS ACT**



## **OPEN MEETINGS ACT** – Overview –

- *Public bodies to conduct all official business in open and previously noticed meetings.*
- *Closed-door/executive sessions may be held for only a few specific purposes; convened only after a vote; attended by only the members of the public body and persons they invite; no vote or other decision may take place during the executive session.*
- *Full and accurate minutes of the meetings must be taken and made available to the public.*

## **OPEN MEETINGS ACT** – Applies to “Public Bodies” –

### **R.C. 121.22(B):**

- *“Public body” means . . . “[a]ny board, commission, committee, council, or similar decision-making body of a state agency, institution, or authority, and any legislative authority or board, commission, committee, council, agency, authority, or similar decision-making body of any county, township, municipal corporation, school district, or other political subdivision or local public institution.”*
- *“Public body” means “[a]ny committee or subcommittee” of the foregoing.*

## OPEN MEETINGS ACT

### – Applies to “Public Bodies” –

- *If a provision of a city charter conflicts with the Open Meetings Act, then the city charter provision will control.*
  - *If a city chooses to draft its own rules concerning the meeting of the public body and the rules are included in its charter, the city council must abide by those rules.*
  - *Where charter explicitly states all council meetings shall be public, must also explicitly state exception for executive session*

## OPEN MEETINGS ACT

### – What Is a “Meeting” –

“Meeting” means “any prearranged discussion of the public business of the public body by a majority of its members.” R.C. 121.22(B)(2)

## OPEN MEETINGS ACT

### – What Is a “Meeting” –

*Four Necessary Requirements for a “Meeting”:*

- (i) Prearranged*
- (ii) Discussion*
- (iii) Public business of the public body*
- (iv) Majority of the members of public body*

## OPEN MEETINGS ACT

### – What Is a “Meeting” – “Prearranged”

- *The statute does not prohibit impromptu hallway meetings.*
- *Unsolicited and unexpected e-mail sent from one board member to other board members is not prearranged.*

## OPEN MEETINGS ACT

### – What Is a “Meeting” – “Discussion of the Public Business”

- *“Discussion” entails an “exchange of words, comments or ideas by the board.”*
- *“Deliberations” involve more than information-gathering, investigation, or fact-finding.*

## OPEN MEETINGS ACT

### – What Is a “Meeting” – “Discussion of the Public Business”

- *Question-and-answer sessions between board members and other persons who are not public officials do not constitute “deliberations” unless a majority of the board members also entertain a discussion of public business with one another.*

## OPEN MEETINGS ACT

### – What Is a “Meeting” – “Discussion of the Public Business”

- “Deliberation”: “the act of weighing and examining the reasons for and against a choice or measure” or “a discussion and consideration by a number of persons of the reasons for and against a measure.”

## OPEN MEETINGS ACT

### – What Is a “Meeting” –

#### Four Necessary Requirements for a “Meeting”:

- (i) Prearranged
- (ii) Discussion
- (iii) Public business of the public body
- (iv) Majority of the members of public body

## OPEN MEETINGS ACT

### – What Is a “Meeting” –

#### Four Necessary Requirements for a “Meeting”:

- (i) Prearranged
- (ii) Discussion
- (iii) Public business of the public body
- (iv) Majority of the members of public body

## OPEN MEETINGS ACT

### – What Is a “Meeting” – “Majority of the Members”

- The Open Meetings Act cannot be circumvented by scheduling back-to-back meetings which, taken together, are attended by a majority of a public body.
- “back-to-back sessions discussing exactly the same public issues can be liberally construed as two parts of the same meeting”

## OPEN MEETINGS ACT

### – What Is a “Meeting” – Ever-expanding requirements

*State ex rel. Cincinnati Enquirer v. Cincinnati Bd. of Ed.*, 192 Ohio App.3d 566, 2011-Ohio-703:

- To violate the OMA, a public body must simultaneously (1) conduct a “meeting” and (2) “deliberate” over “public business”

## OPEN MEETINGS ACT

### – What Is a “Meeting” – Ever-expanding requirements

*State ex rel. Cincinnati Enquirer v. Cincinnati Bd. of Ed.*, 192 Ohio App.3d 566, 2011-Ohio-703:

- a public body deliberates “by *thoroughly* discussing all of the factors involved [in a decision], *carefully* weighing the positive factors against the negative factors *cautiously* considering the ramifications of its proposed action, and *gradually* arriving at a proper decision which reflects th[e] legislative process.”

## OPEN MEETINGS ACT

### – What Is a “Meeting” – Ever-expanding requirements

*State ex rel. Cincinnati Enquirer v. Cincinnati Bd. of Ed.*, 192 Ohio App.3d 566, 2011-Ohio-703:

- Deliberations involve “more than information-gathering, investigation, or fact-finding.”

## OPEN MEETINGS ACT

### – Executive Sessions –

R.C. 121.22(G):

*“the members of a public body may hold an executive session only after a majority of a quorum of the public body determines, by a roll call vote, to hold an executive session and only at a regular or special meeting for the sole purpose of the consideration of any of the following matters: . . .*

## OPEN MEETINGS ACT

### – Executive Sessions –

*Five Requirements for an “Executive Session”:*

- Only at a regular or special meeting*
- Subject of executive session limited to those authorized by the Open Meetings Act*
- Majority of the public body present agree*
- Roll call vote required*
- Motion and vote must state which of the approved matter(s) will be considered in the executive session*

## OPEN MEETINGS ACT

### – Executive Sessions – Regular or Special Meetings

- *“Regular meetings” are those held at prescheduled intervals, such as monthly or annual meetings.*
  - *A public body must establish, by rule, a reasonable method that allows the public to determine the time and place of regular meetings.*

## OPEN MEETINGS ACT

### – Executive Sessions – Regular or Special Meetings

- *A “special meeting” is any meeting other than a regular meeting.*
  - *A public body must establish, by rule, a reasonable method that allows the public to determine the time, place, and purpose of special meetings.*

## OPEN MEETINGS ACT

### – Executive Sessions – Regular or Special Meetings

- *A “special meeting” is any meeting other than a regular meeting.*
  - *At least 24 hours advance notification to all media outlets or individuals who have requested such notification.*
  - *The statement of the meeting’s purpose must indicate issues, and only those issues may be discussed at that meeting.*

## OPEN MEETINGS ACT

### – Executive Sessions – Regular or Special Meetings

- An “emergency” is a special meeting that is convened when the circumstances require.
  - Same requirements as those for special meeting, with exception of 24 hours advance notice.
  - The emergency necessitating the meeting may not be self-created through delay on the part of the public body.

## OPEN MEETINGS ACT

### – Executive Sessions –

#### Five Requirements for an “Executive Session”:

- (i) Only at a regular or special meeting
- (ii) Subject of executive session limited to those authorized by the Open Meetings Act
- (iii) Majority of the public body present agree
- (iv) Roll call vote required
- (v) Motion and vote must state which of the approved matter(s) will be considered in the executive session

## OPEN MEETINGS ACT

### – Executive Sessions –

#### R.C. 121.22(G):

“for the sole purpose of the consideration of any of the following matters: . . .

- 1) Personnel
- 2) Property purchase or sale
- 3) Pending or imminent court action
- 4) Negotiations
- 5) Required by state or federal law to be kept private
- 6) Security arrangements
- 7) Trade secret information of hospital

## OPEN MEETINGS ACT

### – Executive Sessions –

- Exceptions contained in R.C. 121.22(G) – executive sessions are to be strictly construed in favor of public business being conducted in the open
- If challenged in court, burden is on the public body to justify the resort to executive session under one or more of the exceptions

## OPEN MEETINGS ACT

### – Executive Sessions – R.C. 121.22(G)(1) – Personnel

#### R.C. 121.22(G):

“the members of a public body may hold an executive session . . . for the sole purpose of the consideration of . . .

“(1) To consider the appointment, employment, dismissal, discipline, promotion, demotion, or compensation of a public employee or official, or the investigation of charges or complaints against a public employee, official, licensee, or regulated individual. . . .”

## OPEN MEETINGS ACT

### – Executive Sessions – R.C. 121.22(G)(1) – Personnel

#### R.C. 121.22(G)(1):

- Motion must state which one or more of the approved purposes – “appointment, employment, dismissal, discipline, promotion, demotion, or compensation of a public employee or official, or the investigation of charges or complaints against a public employee, official, licensee, or regulated individual.”
- Motion may not simply indicate “personnel”, “personnel matters” or other similar vague language.

## **OPEN MEETINGS ACT**

### **– Executive Sessions – R.C. 121.22(G)(2) – Property**

#### **R.C. 121.22(G):**

*“the members of a public body may hold an executive session . . . for the sole purpose of the consideration of . . .*

*“(2) To consider the purchase of property for public purposes, or for the sale of property at competitive bidding if premature disclosure of information would give an unfair competitive or bargaining advantage to a person whose personal, private interest is adverse to the general public interest.”*

## **OPEN MEETINGS ACT**

### **– Executive Sessions – R.C. 121.22(G)(3) – Court Action**

#### **R.C. 121.22(G):**

*“the members of a public body may hold an executive session . . . for the sole purpose of the consideration of . . .*

*“(3) Conferences with an attorney for the public body concerning disputes involving the public body that are the subject of pending or imminent court action.”*

## **OPEN MEETINGS ACT**

### **– Executive Sessions – R.C. 121.22(G)(3) – Court Action**

- *“Pending” court action has been described as that period of time between the inception of the lawsuit and rendition of final judgment.*

## **OPEN MEETINGS ACT**

### **– Executive Sessions – R.C. 121.22(G)(3) – Court Action**

- *“Imminent” has been defined as an action or event “on the point of happening” or one that is “impending”.*
- *“Imminent” is satisfied where the public body has formally committed itself to a litigative solution and assumed a litigative posture, frequently manifested by decision to commit government resources.*

## **OPEN MEETINGS ACT**

### **– Executive Sessions – R.C. 121.22(G)(3) – Court Action**

#### **R.C. 121.22(G):**

*“the members of a public body may hold an executive session . . . for the sole purpose of the consideration of . . .*

*“(3) Conferences with an attorney for the public body concerning disputes involving the public body that are the subject of pending or imminent court action.”*

## **OPEN MEETINGS ACT**

### **– Executive Sessions – R.C. 121.22(G)(3) – Court Action**

- *Board members or employees who happen to be attorneys are not the “attorney for the public body” contemplated by R.C. 121.22(G)(3).*
- *A public body may not use R.C. 121.22(G)(3) to adjourn into executive session for discussions with a board member who also happens to be an attorney*



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# **OPEN MEETINGS ACT**

