



# Ohio Municipal League

*Our Cities and Villages ★ Bringing Ohio to Life*

The Ohio Municipal League is not opposed to a fair and workable public records law.

We will be willing to work with the Committee and members of the Senate to ensure that a fair balance is maintained as to access to public records, the protection of sensitive information and the appropriate and efficient use of tax dollars.

## I Areas of Extreme Concern with H.B. 9 as passed by the House

### A) Expanded definition of “Public Record” (Sec. 149.011 (G) Revised Code)

It appears to apply to not just records but anything kept in a public office.

### B) Creation of a Public Access Counselor and Procedure for Mediation and Advisories

In the case of an alleged Open Meetings or Public Records violation, local officials would have to face dueling actions, one in court and one before the PAC.

### C) Redaction

While the public office may redact information that is exempt, it is still considered a denial of a request and potentially subject to penalties.

### D) Fines and Penalties

Statutory damages are conclusively presumed for “lost use of the requested information.” Thus, the person making the request has no duty to prove that there was any actual damage. Such fines and awards only constitute a punishment of the municipal taxpayers.

## II Inconsistencies with Other Statutes or Practices that Should be Addressed

A) Section 121.22 of the open meetings law provides a limited number of instances when executive sessions may be held. Yet there is no exemption from the public records law of the work products or discussion drafts of items to be discussed at these executive sessions. This can be especially sensitive during labor negotiations or when price comparisons or the condition of land or structures are prepared for the consideration of purchase or sale of property by the municipality. At the very least where the open meetings statute provides for executive sessions and confidentiality, documents created under such circumstances should be exempt from disclosure under the public records law

until action is taken or acceptance is made at a public meeting.

B) There needs to be specific clarification that the attorney-client privilege extends to the documents or work products created as a result of such privilege.

### III Suggestions for Enhancements to Current Law

#### A) Competitive Information Protection

1) Contents of Civil Service and other employment and promotional tests should not be public records until after they are given. The same would hold true for various certification testing mechanisms.

2) Working papers or discussion drafts that relate to discussions with developers, businesses etc., relative to exploring potential economic development projects should be exempt from disclosure in order to retain a competitive edge and afford company officials some degree of confidentiality.

B) Certain personal information on all public employees needs to be protected in this era of identity theft, especially social security numbers and bank account numbers.

C) Audio copies of 911 recordings should not be subject to release. As Justice Pfeifer commented after a supreme court decision: "A person should be able to summon the help of police officers or firefighter without having his plea broadcast on the evening news." "A transcript of a 911 call would convey the necessary information without transforming a personal tragedy into a public spectacle".

D) Photos of crime victims should not be subject to release. Common decency dictates that we should be sensitive toward the traumatized victims and their families.

E) Internal affairs investigatory materials should not be subject to disclosure during the course of the investigation.

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