



HANDBOOK

Ohio County Commissioners

Published by: County Commissioners Association of Ohio

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CHAPTER 129

OHIO PRIVACY ACT

Latest Revision
1994

129.01 INTRODUCTION

The Ohio Privacy Act, as detailed in Chapter 1347 of the Revised Code regulates the collection of information by governmental jurisdictions, and became effective in 1977. The purpose of the law is to protect individuals from excessive governmental record keeping and to give individuals additional access to information about themselves.

Because there was considerable confusion over the relationship of the Privacy Act to the Public Records Law, the legislature has amended the original law at least twice to reduce the confusion. The debate between personal privacy and public access to records has thus been clearly decided in favor of public access. Ohio Attorney General's Opinion 80-096 provides excellent background reading on this subject. As the Attorney General has stated: "the Privacy Act does not in any way restrict access to records that are public under the terms of ORC 143.43." Readers are urged to read this chapter of the handbook in conjunction with the previous chapter - Public Records and Records Commission.

Under the Privacy Act it is a violation of privacy for counties collect more information than necessary. Measures are required to assure that the information collected, kept on file and used is accurate, complete and relevant. Certain information is required to be given to the person from whom the information is collected and to the person examining the record. Civil and criminal penalties are provided for intentional non-compliance.

Under the original law, counties were required to report annually to the Ohio Privacy Board. This requirement ended with the abolishment of the board by the legislature in 1981.

129.02 GENERAL DEFINITIONS (ORC 1347.01)

State Agency includes the office of any elected state officer and any agency, board, commission, department, division, or educational institution of the state. All state agencies must file yearly with the Director of the Department of Administrative Services (DAS).

Local Agency is any municipal corporation, school district, special purpose district, or township of the state or any elected officer or board, bureau, commission, department, division, institution or instrumentality of a county.

Special Purpose District means any geographic or political jurisdiction that is created by statute to perform a limited and specific function, and includes, but is not limited to, library districts, conservancy districts, metropolitan housing authorities, park districts, port authorities, regional airport authorities, regional transit authorities, regional water and sewer districts, sanitary districts, soil and water conservation districts, and regional planning agencies.

Maintain means state or local agency ownership of, control over, or responsibility for systems and includes, but is not limited to a state or local agency depositing of information with a data processing center for storage, processing, or dissemination. For the purposes of the Privacy Act, an agency maintains all systems of records that are required by law to be kept.

129.03 PERSONAL INFORMATION

Personal information, as defined in the law, means any information that describes anything about a person, or that indicates actions done by or to a person, or that indicates that a person possesses certain personal characteristics, and can be

retrieved from a system by a name, identifying number, symbol, or any other identifier assigned to a person.

Personal information is broadly defined to cover any information about a person, not just information judged to be sensitive. Persons include any individuals, corporations, associations, business trusts, estates and other trusts. The system is kept so that information can be retrieved by using the person's name or another identifier, such as an employee number, social security number; etc.

The following entities are exempt from provisions of the Privacy Act (ORC 1347.04):

1. Any state or local agency whose principal function relates to the enforcement of criminal laws, including police efforts to prevent, control, or to reduce crime or to apprehend criminals,

2. Criminal courts,
3. Prosecutors,
4. Any state or local agency that is a correction, probation, pardon or parole authority, and
5. Personal information systems that comprise investigatory material compiled for law enforcement purposes by agencies that do not regularly perform any law enforcement correction, probation, pardon or parole activity.

The Privacy Act does not restrict access to public records containing personal information as defined in Section 149.43 of the Revised Code. This includes records that are confidential as explained in section 128.04 of this handbook.

The law also does not authorize a public body to hold an executive session for the discussion of personal information if the executive session is not authorized under division (G) of Section 121.22 of the Revised Code, Ohio's open meeting or "Sunshine Law".

129.04 PERSONAL INFORMATION SYSTEMS

The following definitions (ORC 1347.01) will be helpful when dealing with personal information systems:

System means any collection or group of related records that are kept in an organized manner and that are maintained by a state or local agency, and from which personal information is retrieved by the name of the person or by some identifying number, symbol, or other identifier assigned to the person. "System" includes both records that are manually stored and records that are stored using electronic data processing equipment. A system, however, does not include collected archival records in the custody of or administered under the authority of the Ohio Historical Society, published directories, reference materials or newsletters, or routine information that is maintained for the purpose of internal office administration, the use of which would not adversely affect a person.

Interconnection of systems means a linking of systems that belong to more than one agency or other organizations, where the linking of systems would result in a system of unrestricted access to both systems by the agency or organization.

Combination of systems means a unification of systems that belong to more than one agency, and another organization, into a single system in which the records that belong to each agency or organization may or may not be obtainable by the other.

In both interconnected and combined systems, records belonging to more than one agency or department are joined into one common record system. A manually maintained system could be classified as an interconnected or combined system but it is more likely that such

systems will be computerized. An interconnected system is designed so that two different departments or offices can directly access each others records combined in a system, but all participants in the system may or may not be able to access both sets of records. Combined systems join sets of records in one system.

129.05 RESTRICTIONS ON PERSONAL INFORMATION

Counties may collect, maintain and use only necessary personal information that is relevant to functions required to be performed by law. Information must be deleted when it is no longer necessary. To assure any decisions based on the records are fair, procedures must be developed to monitor the accuracy, relevance, timeliness and completeness of the personal information maintained.

When a person, either the individual himself or a third party, is asked to supply personal information for a county system, the individual should be advised if they are legally required to provide the information or they may refuse to supply the information. This applies to personal information requested orally, in writing, or on forms or applications.

For information to be legally required a federal, state or local statute or rule must require the person to supply the information to the agency. If a law requires the person to submit the information as a condition of eligibility, it is not necessarily "legally required". If not legally required, the person may refuse to supply the information and not participate in the program. If information is not legally required but is necessary for the county to perform a function, advise the person that failure to provide the information may result in denial or loss of services. Other significant provisions of the law, as contained in Section 1347.071 of the Revised Code include:

1. No county shall place personal information in an interconnected or combined system or use personal information placed by another participant in the system unless use of the system will contribute to more efficient implementation of programs authorized by law.

2. No county shall use personal information placed in a system by another county or participant unless the personal information is necessary or relevant to the performance of a lawful function of the county.

3. When personal information that will be placed in an interconnected or combined

system is requested from an individual, the county must provide the individual with relevant information about the system, including the identity of the other participants having access to the information in the system.

129.06 RECORD INSPECTION (ORC 1347.08)

Counties are not required to notify an individual about records kept unless that person requests the information. If such a request is made, the county must inform the person about all records which pertain even if the records are not open for inspection due to the subject matter. A person, or a third party authorized by the person, may inspect all personal information which pertains to the person. Unlike the public records act, the agency must obtain proof of identification from individuals requesting information about themselves. If a person is a representative, a written release from the individual is required. The following information is exempt from disclosure:

1. Adoption records which are subject to release pursuant to Section 3107.17 of the Revised Code.
2. Confidential law enforcement investigatory records or trial preparation records.
3. Medical, psychological or psychiatric information when a physician has advised that inspection will be harmful to the person. If such access has been denied, the person must be advised that the information may be released directly to a designated physician, psychologist or psychiatrist.
4. Information that would lead to the identity of a person who had made a complaint about nursing home abuse, neglect, or the misappropriation of property. This relates primarily to state agencies.

Copies of any information the person may inspect must be provided upon request. A reasonable fee may be charged to cover the cost of copies.

129.07 DISPUTED INFORMATION (ORC 1347.09)

A person may challenge information believed to be inaccurate, irrelevant, untimely or incomplete and may request the county to investigate the current status of the information. Within a reasonable time, but not later than 90 days after receiving the request from the disputant, the county must investigate to determine if the disputed information is timely, accurate, relevant and complete. After the investigation the county must notify the disputant of any action taken and delete any unverifiable information.

A person that is not satisfied with the outcome of the investigation may include a brief statement of their position with the records. Any subsequent transfer, report or dissemination of the disputed information must include a copy of the statement or notation of the existence of the statement. The county also has a right to include a statement explaining why the dispute is frivolous. If information has been deleted by the county, or a statement of dispute was filed, the county is required, at the written request of the disputant, to notify them of the deletion or provide a copy of the disputant's statement to

any designated person. The county shall clearly and conspicuously tell the disputant of his right to such a request.

129.08 LIABILITY AND PENALTIES (ORC 1347.10)

A person harmed by personal information in a county system may recover damages by civil action against any person who directly and nearly caused the harm. Harm can be caused intentionally by:

1. Maintaining inaccurate, irrelevant, untimely or incomplete information,
2. Using or disclosing personal information in a manner prohibited by law,
3. Supplying, using or disclosing personal information maintained in a system that is known, or suspected to be false, and
4. Denying the person the right to inspect and dispute the personal information when the inspection and correction might have prevented harm.

In order to be found liable, the action must be brought within two years after the cause of action or within six months after the wrong doing is discovered, whichever, is later. Under no circumstances, however, may any action be taken later than six years from the date the cause of action occurred.

A court may order the person or county that violates or proposes to violate the Privacy Act to comply with the act or to cease or prevent actions or practices which violate the act. A person harmed may also bring a suit for damages, and the refusal to comply with certain provisions of the law constitutes a minor misdemeanor.

129.09 DUTIES OF COUNTIES (ORC 1347.05)

To comply with the Privacy Act counties must comply with the law as previously discussed and:

1. Appoint one person to be directly responsible for the system,
2. Adopt and implement county operational rules,
3. Inform employees who work with the personal information system of the provisions of the law and all county personal information system rules,
4. Specify disciplinary measures for any employee who contributes to any retaliation toward a person who discovers evidence of unauthorized use of information in the system. This is the "whistle-blower protection" provision,

5. Inform the person supplying the information if the person is legally required to give the information,
6. Develop monitoring procedures to maintain the system which insure accuracy, relevance, timeliness and completeness in order to assure fairness,
7. Take precautions to protect the personal information system from unauthorized modification, destruction, use or disclosure, and
8. Collect, maintain, and use only personal information that is necessary and relevant to the functions which the county agency is required to perform by statute, resolution or rule and eliminate information that is no longer necessary and relevant.

129.10 SOCIAL SECURITY NUMBERS

The federal Privacy Act (P.L. 93-579) requires a county requesting a social security number to disclose on the form that requests the social security number the following:

1. If supplying the number is mandatory or voluntary.
2. The law or other authority that allows the request.
3. The use that will be made of the number.

While various state and federal laws allow the use of social security numbers, for tax administration, public assistance, drivers licenses, and motor vehicle registration, counties can not deny "any right or privilege provided by law" because the person will not give a social security number. Even if there is legal authority to require a social security number, the disclosure statement is still required.