



September 19, 2022

MEMORANDUM FOR: All County Boards of Elections  
Board Members, Directors, and Deputy Directors

FROM: Ohio Secretary of State Frank LaRose

SUBJECT: Public Records

Many of you have contacted me or my office recently regarding the influx of public records requests received by our county boards of elections, including requests for the disclosure of cybersecurity protocols, past-cycle election data, and personal voter contact information. The unusual volume of these requests has raised significant compliance questions and created an enormous amount of justifiable frustration and anxiety.

To be clear, I am a staunch defender of transparency in our elections and the importance of public trust in their outcomes; however, we need to reconcile those objectives with the task before us. In many cases, basic compliance often involves thousands of staff hours and potentially tens of thousands of dollars in reproduction costs, all while preparing for the impending *third* statewide election of 2022. We are almost one week from the start of military voting in the November 8 General Election, and early voting for the general public begins in nearly three weeks. Many of these requests, particularly due to their timing, threaten to delay and disrupt our statutory obligations to prepare for those deadlines.

As you know, the statutory legal authority for the boards is the county prosecutor, and I strongly advise you to consult with your prosecuting attorney's office on these and other matters related to the interpretation of state law. However, my office can and does provide input that your respective prosecutor might find useful in providing counsel on this and other matters.

Under the Ohio Public Records Act, all public bodies in Ohio are obligated to respond to appropriately framed public records requests *in a reasonable amount of time under the circumstances*. With the guidance of your county prosecuting attorneys, you will eventually have to respond to these requests in some fashion, either all at once or at rolling intervals of fulfillment. **My view, however, is that our duty to conduct honest, accurate, and secure elections is not only vital to the public interest but also critical to the foundation of our entire democracy. Each board must devote *all* its available resources – before, during, and after Election Day – to achieving that objective.**

In addition, some of the public records requests you have received appear to contain requests for board records that may involve cybersecurity protocols. Although our office cannot provide you with specific legal advice on how to respond, my legal team has put together a list of considerations when reviewing any public records request with your prosecutor.

Records containing cybersecurity information should be thoroughly reviewed to identify any sensitive information that may exempt them from disclosure under R.C. 149.433 (exemption of security and infrastructure records from disclosure). In a past response by the Secretary's office to similar public records requests for records containing security and infrastructure information, our legal team determined that the following information is exempt:

- SOS or County IP addresses;
- Information provided or received in response to security and vulnerability assessments;
- Information identifying or describing the specific type of hardware or software systems;
- Information identifying the number of hardware systems;
- Contact information or email addresses used for direct reporting or urgent communications;
- Incident response plans or escalation procedures;
- Questionnaires disclosing cyber monitoring processes.

Finally, I also have become aware that some requests received by the county boards are seeking to obtain registered voters' personal email addresses and/or phone numbers. Voters may provide that information to a board for administrative convenience (i.e., for a board to be able to quickly contact the voter if there is an issue with the voter's ballot request or the voted ballot itself); however, state law does not necessarily require that these forms of personal contact be treated as a public record.

The Ohio Revised Code establishes a three-part test to define a public record:

- The form of the record (i.e., document, physical item, electronic, etc.)
- The origin of the record (i.e., how the record was created or obtained)
- The function of the record (i.e., whether the record documents a function of the office)

The Ohio Attorney General's public records resource manual states (on page 3): "If a document or other item does not meet all three parts of the definition of a 'record,' then it is a non-record and is not subject to the Public Records Act or Ohio's records retention requirements." The manual goes on to state (on page 4): "Personal correspondence or personal email addresses that do not document any activity of the office are non-records."

The legal authorities for that statement cited by the Attorney General are: *State ex rel. Wilson-Simmons v. Lake Cty. Sheriff's Dept.*, 82 Ohio St.3d 37, 693 N.E.2d 789 (1998); *Brown v. City of Cleveland*, Ct. of Cl. No. 2018-01426PQ, 2019-Ohio-2627, ¶¶8-10 (holding that residents' phone numbers and email addresses were not public records because they were only used for administrative purposes). The Attorney General also cites a 2014 Opinion (No. 029) by the Ohio Attorney General's Office which states that determining whether a personal email address contained in a public record is itself a public record is a fact-specific inquiry that must be determined on a case-by-case basis. In that Opinion, the Attorney General ultimately decided that:

"Personal email addresses that are contained in an email sent by a township fiscal officer that do not document the organization, functions, policies, decisions, procedures,

operations, or other activities of the township do not constitute ‘records,’ as defined in R.C. 149.011(G), and are not required to be disclosed by R.C. 149.43.”

**For this reason, I advise against the disclosure of voter phone numbers and email addresses, as they should be considered non-records.** I do not believe the voters share this information with the understanding that their personal contact information can be disclosed to political operatives and candidates seeking to raise money or engage in persuasion activity. To put it bluntly, disclosing these non-records could potentially discourage citizens from sharing important contact information or even from engaging in their civic duty at all.

I hope you find this information to be useful. Again, we share a common, bipartisan interest in the transparency of our elections and the importance of public accountability. I truly believe we can achieve those interests in a reasonable amount of time, but our core mission and priority in the weeks ahead must be the successful administration of a statewide election.

Please share this input with your prosecuting attorney as you deliberate on next steps. As always, my office stands ready to assist.



Frank LaRose  
Ohio Secretary of State