



JENNIFER BRUNNER
OHIO SECRETARY OF STATE

180 East Broad Street, 15th floor
Columbus, Ohio 43215-3726 USA
Tel.: 1-614-466-2655
Fax: 1-614-644-0649
www.sos.state.oh.us

ADVISORY NO. 2007-03

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To: All County Boards of Elections

Re: Sub. H.B. 141 (126th General Assembly) – Exclusions to Ohio’s Public Records Law Expanded

Sub. H.B. 141, which makes changes to statutes relating to Ohio’s Public Records Law (R.C. 149.43), was signed by the former governor and filed in the Secretary of State’s office on December 29, 2006. Our administration recently became aware of the bill, the provisions of which became effective on March 30, 2007, and which may impact certain responsibilities of boards of elections. An electronic version of the enrolled act may be reviewed at: http://www.legislature.state.oh.us/bills.cfm?ID=126_HB_141

In general, Sub. H.B. 141 amends R.C. 149.43, R.C. 2921.24, R.C. 2921.25, and R.C. 4501.271 to give parole officers, prosecuting attorneys in most cases, assistant prosecuting attorneys, and certain correctional and youth services employees the same options as peace officers, EMTs and other specified public employees, with respect to confidentiality of certain personal information. Eliminated from R.C. 149.43(A)(7) is the requirement that a record must identify the person as a peace officer, EMT, parole officer, prosecutor, correctional or youth services employee in order for that record to be excluded from the definition of “public record.” Construed liberally, R.C. 149.43(B)(7), as amended, excludes from the public record *any* record – including, arguably, a voter registration record – that discloses the residential or familial information of any exempted person.

I am concerned that this amendment to the public records law may pose difficulties for boards of elections with respect to distributing lists of registered voters to political parties and other citizens and organizations, as it is reasonable to assume that those lists will disclose the addresses of police officers and other categories of public employees as described above.

Note: Another act passed by the 126th General Assembly to amend Ohio’s Public Records Law is Substitute House Bill No. 9, which was discussed in Advisory No. 2007-02. Please note that the provisions of Sub. H.B. 9 that impact the boards of elections do not become effective until September 29, 2007, whereas the provisions of Sub. H.B. 141 became effective on March 30, 2007.

The Ohio Attorney General has been requested to issue an opinion on the application of Sub. H.B. 141’s provisions to records maintained by boards of elections. In the interim, I strongly

encourage each board of elections to share this Advisory with its prosecuting attorney as soon as possible. This will allow counsel the opportunity to become familiar with these new provisions and determine whether or not to notify other political subdivisions in the county whose employees may be protected by this legislation.

Because uniformity throughout the state is necessary when fulfilling public records requests for voter registration and other election information, we are providing you with advice on the handling of requests for public records containing election related information. At present, we do not advise you to withhold disclosure of public records that may contain the information to be protected until you become aware that such individual falls within the class of persons for whom there is nondisclosure of personal information. In the event you are requested to redact personal information for employees protected by this legislation prior to fulfilling a public records request, we advise you to do so only after obtaining an affidavit from the requesting person or entity before redacting such information.

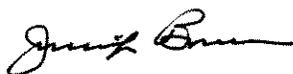
By way of example, if a “walking list” is requested from your board, you should provide the list or data as it is stored in your office, unless you have received an affidavit requesting the redaction of personal information of one or more individuals on that list who is within the classes of employees whose information has been deemed confidential. If you have an affidavit identifying such person, you should redact the name and provide a statement as appears below, along with the redacted records:

STATEMENT TO BE PROVIDED: “These records have been provided to you in compliance with the provisions of recently enacted Sub. H.B. 141, which prohibits the disclosure of certain personal information of parole officers, prosecuting attorneys, assistant prosecuting attorneys, and certain correctional and youth services employees.”

“Redaction” literally means “edited.” When used in conjunction with public records, redaction means that certain information has been edited from the version of the public records provided so that it is not disclosed – in this case, the personal information relating to identified individuals within the named classes of persons whom the law seeks to protect. Redaction should be by a means that the information considered confidential cannot be discerned from the document or documents.

We anticipate providing you further advice as we learn it from the Ohio Attorney General. If you have questions in the meantime, please feel free to direct questions to your assigned Elections Counsel at (614) 466-2585, or by e-mail to any of them.

Sincerely,



Jennifer Brunner
Secretary of State