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# COUNTY ADVISORY BULLETIN

CAB

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Bulletin 2019-1

January 2019

## ELIMINATION OF THE DISCLOSURE EXEMPTION FOR PERMANENTLY RETAINED PUBLIC RECORDS

**APPLICABLE LEGISLATION:** Sub. HB 139 (132nd General Assembly)

**REVISED CODE SECTIONS:** Amends ORC Section 149.43

**LEAD SPONSORS:** Representatives Rick Perales and Candice Keller

**HOUSE COSPONSORS:** Hambley, Fedor, Seitz, Dean, Antonio, Brenner, Craig, Cupp, Green, Greenspan, Lang, Retherford, Riedel, Young

**SENATE COSPONSORS:** Uecker, Coley, Skindell, Brown, Eklund, Hackett, Kunze, Manning, Oelslager, Schiavoni, Tavares, Terhar, Thomas, Yuko

**EFFECTIVE DATE:** April 7, 2019

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### **BACKGROUND**

House Bill 139 provides continuity for records disclosures and County Recorders across counties to ensure access to records for genealogists and historians. Counties have varying laws and year marks for the disclosure of permanently retained records. HB 139 creates continuity on disclosure laws between counties in addition to providing the public with access to important historical information, which is currently unavailable, by lifting access restrictions on records scheduled for permanent retention after 75 years. The lifting of access restrictions allows the public to be able to access adoption records, lunacy records, county home registers, children's home registers, juvenile court case records, witness dockets, inheritance tax records, and veteran's relief records after 75 years.

### **GENERAL INFORMATION**

HB 139 amends ORC Sec. 149.43 to eliminate the disclosure exemption for any permanently retained public record. The bill specifies that if a record is not public record because it is exempted by the Public Records Act, and is also permanently retained, the bill becomes public

record 75 years after the creation of the record. The bill also provides a list of exceptions to the 75-year mark for disclosure.

### **THE OHIO PUBLIC RECORDS ACT**

The Public Records Act requires that public offices prepare public records, within a reasonable amount of time, when requested and make them available to the requester at all times during regular business hours. The Act contains a list of categories of records that are not considered public records and thus not subject to disclosure. Under continuing law, the Public Records act applies to all “public offices,” and thus all counties. A “record” is any document, device, item, or electronic documentation created or received by any public office of the state or its political subdivisions.

### **MODIFICATIONS TO THE OHIO PUBLIC RECORDS ACT**

House Bill 139 requires that any record that is not a public record, due to exemptions outlined by ORC 149.43, and is permanently retained, will become public record at the 75-year mark, with some exceptions to the bill. House Bill 139 requires that all counties allow access to any and all records, with the exception of those records listed in the bill that are not subject to the disclosure requirement, after the 75-year mark has passed.

### **EXCEPTIONS TO THE BILL’S 75-YEAR MARK FOR DISCLOSURE**

The following records are not subject to House Bill 139’s 75-year mark for disclosure:

- (1) A record protected by the attorney-client privilege;
- (2) A “trial preparation record”;
- (3) A statement prohibiting the release of identifying information signed by a biological parent under an adoption law;
- (4) A denial of release form that is signed by a birth parent and filed with the Department of Health under an adoption law;
- (5) Security and infrastructure records that are exempt from release or disclosure under continuing law.

Additionally, if the record is a birth certificate, and a biological parent’s name redaction request form has been accepted by the Department of Health under continuing law, the name of the parent must be redacted from the birth certificated before it can be disclosed.