# CITY OF HUBER HEIGHTS
# STATE OF OHIO
# Public Records Commission Meeting
# December 7, 2023
# 9:00 A.M.

City Hall – 6131 Taylorsville Road –
City Council Conference Room

1. **Call To Order/Roll Call**

2. **Approval of Minutes**

   A. June 22, 2023

3. **Topics of Discussion**

   Pending Business

   New Business

   A. Public Records Retention And Disposal Schedules

   B. City Public Records Policy

   C. City Records Storage Areas And Systems

   D. Public Records Processing And Related Issues

4. **Adjournment**

**AI-9728** **New Business A.**

**Public Records Commission**

**Meeting Date:** 12/07/2023

Public Records Retention And Disposal Schedules

**Submitted By:** Anthony Rodgers

**Department:** City Council

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**Subject**

Public Records Retention And Disposal Schedules

**Purpose and Background**

There is one Records Retention Schedule (RC-2 Form) for Legal/Law Director for approval by the Public Records Commission (see attached).

City Staff were unable to complete updated RC-2 Forms and RC-3 Forms for City departments/divisions due to the recent cyberattack on the City's IT infrastructure.

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**Fiscal Impact**

| Source of Funds | Cost | Recurring Cost (Yes/No) |
|---|---|---|
| N/A | N/A | N/A |

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**Attachments**

RC-2 Form - Legal/Law Director

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Ohio History Connection
State Archives of Ohio
Local Government Records Program
800 E. 17th Avenue
Columbus, Ohio 43211-2474
614.297.2553
localrecs@ohiohistory.org
www.ohiohistory.org/lgr



# RECORDS RETENTION SCHEDULE (RC-2)– Part 1

*See instructions before completing this form. Must be submitted with PART 2*

**Section A and Section B must be filled out and signed by local government before submission to the State Archives**

**Section A: Local Government Unit**

| City Of Huber Heights | | | Legal (Including City Attorney/Law Director and Other Attorneys Representing City) |
|---|---|---|---|
| (Local Government Entity) | | (Unit) | |
| | David Montgomery | Law Director | 12/07/23 |
| (Signature of Responsible Official) | (Name) | (Title) | (Date) |

**Section B: Records Commission** *See ORC 149.38 – ORC 149.412 for Records Commission information*

| City of Huber Heights Public Records Commission | | | (937) 233-1423 (Telephone Number) |
|---|---|---|---|
| 6131 Taylorsville Road | Huber Heights | 45424 | Montgomery/Miami |
| (Address) | (City) | (Zip Code) | (County) |

To have this form returned to the Records Commission electronically, include an email address: arodgers@hhoh.org

I hereby certify that our records commission met in an open meeting, as required by Section 121.22 ORC, and approved the schedules listed on this form and any continuation sheets. I further certify that our commission will make every effort to prevent these records series from being destroyed, transferred, or otherwise disposed of in violation of these schedules and that no record will be knowingly disposed of which pertains to any pending legal case, claim, action or request. This action is reflected in the minutes kept by this commission.

| | 12/07/23 |
|---|---|
| Records Commission Chair Signature | Date |

**Section C: Ohio History Connection - State Archives**

| Signature | Title | Date |
|---|---|---|

**Section D: Auditor of State**

| Signature | Title | Date |
|---|---|---|

***Please Note: The State Archives retains RC-2 forms permanently. It is strongly recommended that the Records Commission retain a permanent copy of this form***

## Section E: RECORDS RETENTION SCHEDULE (RC-2) – Part 2

*See instructions before completing this form.*

**City of Huber Heights** **Legal Department**

(Local Government Entity) (Unit)

| (1) Schedule Number | (2) Record Title and Description | (3) Retention Period | (4) Media Type | (5) For use by Auditor of State or LGRP | (6) RC-3 Required by LGRP |
|---|---|---|---|---|---|
| 508-01 | Transient Correspondence/Communication Records | Retain until no longer of administrative value. | Paper/ Electronic | | ☐ |
| 508-02 | Drafts Of Letters/Correspondence | Retain until final letter or document is complete or until no longer of administrative value. | Paper/ Electronic | | ☐ |
| 508-03 | Notes | Retain until no longer of administrative value. | Paper/ Electronic | | ☐ |
| 508-04 | Blank Forms For Use By City | Retain until obsolete or superseded. | Paper/ Electronic | | ☐ |
| 508-05 | Voicemail | Retain until heard and no longer of administrative value in the normal course of business. | Voicemail | | ☐ |
| 508-06 | General Correspondence From Third Parties Regarding City That Is Not Transient | Retain until provided to City. | Paper/ Electronic | | ☐ |
| 508-07 | General Correspondence To City | Retain until no longer of administrative value. | Paper/ Electronic | | ☐ |
| 508-08 | General Correspondence From City That Is Not Transient | Retain until no longer of administrative value. | Paper/ Electronic | | ☐ |
| 508-09 | Legal Opinions Provided To City | Retain 7 years. | Paper/ Electronic | | ☐ |
| 508-10 | Draft/Proposed Contracts/Agreements | Retain until no longer of administrative value. | Paper/ Electronic | | ☐ |
| 508-11 | Final Contracts/Agreements Provided To City | Retain 7 years. | Paper/ Electronic | | ☐ |

## Section E: RECORDS RETENTION SCHEDULE (RC-2) – Part 2

*See instructions before completing this form.*

**City of Huber Heights** **Legal Department**

(Local Government Entity) (Unit)

| (1) Schedule Number | (2) Record Title and Description | (3) Retention Period | (4) Media Type | (5) For use by Auditor of State or LGRP | (6) RC-3 Required by LGRP |
|---|---|---|---|---|---|
| 508-12 | Photographs/Negatives/Electronic Images | Retain images that have significant legal, fiscal, administrative, or historical value until sent to City. Retain all other images until no longer of administrative value. | Paper/ Electronic | | ☐ |
| 508-13 | Court Case Documents Not Contained In Court Filed Criminal Cases | Retain until case is final after all appeals. | Paper/ Electronic | | ☐ |
| 508-14 | Court Case Documents Not Contained In Court Filed Civil Cases | Retain until case is final after all appeals. | Paper/ Electronic | | ☐ |
| 508-15 | Petit Jury Records - Criminal Cases | Retain 7 years after case closed. | Paper/ Electronic | | ☐ |
| 508-16 | Victim Of Crime Notices | Retain 7 years after case closed. | Paper/ Electronic | | ☐ |
| 508-17 | Professional/Trade Magazines, Catalogs, And Directories | Retain until no longer of administrative value. | Paper/ Electronic | | ☐ |
| 508-18 | Business Cards (Rotary/Rolodex/Applicable Software Files) | Retain until no longer of administrative value. | Paper/ Electronic | | ☐ |
| 508-19 | Calendar/Schedule For City Matters | Retain until no longer of administrative value. | Paper/ Electronic | | ☐ |
| | | | | | ☐ |
| | | | | | ☐ |

**AI-9729** **New Business** **D.**

**Public Records Commission**

**Meeting Date:** 12/07/2023

Public Records Processing And Related Issues

**Submitted By:** Anthony Rodgers

**Department:** City Council

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**Subject**

Public Records Processing And Related Issues

**Purpose and Background**

There are two items of correspondence related to public records issues from the Law Director included in the meeting packet.

The first item deals with the suggested formats for retention of permanent public records (see attached).

The second item defines the parameters of body camera footage of minors as a public record (see attached).

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**Fiscal Impact**

| Source of Funds | Cost | Recurring Cost (Yes/No) |
|---|---|---|
| N/A | N/A | N/A |

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**Attachments**

Public Records Issues Information

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## Rodgers, Anthony

**From:** McDonald, Gerald <GMcDonald@pselaw.com>
**Sent:** Wednesday, September 27, 2023 9:38 AM
**To:** Rodgers, Anthony
**Subject:** hard copies of permanent records

CAUTION EXTERNAL EMAIL: This message originated from a non Huber Heights email server. DO NOT CLICK ANY LINKS or OPEN ANY ATTACHMENTS unless you have contacted the sender to verify its legitimacy or confirmed you were expecting it. Contact the IT Department if you need assistance.

Just an FYI, according to the Ohio Electronic Records Committee, "if records are required to be maintained permanently, public entities are discouraged from maintaining solely in a digital format. The Ohio History Connection has issued a statement on maintaining digitally imaged records permanently which states its recommendation that any digitally imaged records of permanent value also be maintained in either paper or microfilm format. There are several reasons for this recommendation because the technology surrounding electronic records are in a continuous state of change. Any record in electronic format cannot be considered stable and capable of remaining reliable, authentic, and accessible over any long-term or permanent retention period."

I cannot recall if we have any "permanent" retention periods for electronic documents.

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## Rodgers, Anthony

**From:** McDonald, Gerald <GMcDonald@pselaw.com>
**Sent:** Tuesday, September 19, 2023 8:30 AM
**To:** Rodgers, Anthony
**Cc:** Johnson, Deztany
**Subject:** FW: statutory interpretation

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Tony, we went into the legal weeds here, but long and short of it is that body cam footage of a child IS A PUBLIC RECORD unless it is the image or identity of a child who is a primary subject of video and the PD knows or has a reason to know it is a child.

**From:** Johnson, Deztany <DJohnson@pselaw.com>
**Sent:** Monday, September 18, 2023 3:26 PM
**To:** McDonald, Gerald <GMcDonald@pselaw.com>
**Cc:** Bly, Michael <MBly@pselaw.com>
**Subject:** RE: statutory interpretation

Jerry,

I had a chance to review and the statutory canon you are referring to is the ***last antecedent rule.***

The disjunctive list cannon, utilizes the word "or," and typically signifies a disjunctive list, meaning satisfying any one condition in the list is sufficient.

The last antecedent rule is a doctrine of interpretation by which the court finds that qualifying words or phrases refer to language immediately preceding the qualifier, unless common sense shows that it was meant to apply something more distant or less obvious.

(a) The image or identity of a child **OR** information that could lead to the identification of a child who is a primary subject of the recording when the department of rehabilitation and correction, department of youth services, or law enforcement agency knows or has a reason to know the person is a child based on the departments or law enforcement agency's resources or the content of the recording.

Preceding Phrase 1
Preceding Phrase 2
Qualifier

Fist Officer's interpretation

(b) The image or identity of a child, **OR** information that could lead to the identification of a child who is a primary subject of the recording when the department of rehabilitation and correction, department of youth services, or law enforcement agency knows or has a reason to know the person is a child based on the departments or law enforcement agency's resources or the content of the recording.

I am in agreeance with you as well as the second officer's interpretation of the statue. The first officer's interpretation is incorrectly assuming that the qualifying words, "who is the primary subject of the recording...." does not apply to both of the preceding phrases. The first officer's interpretation would be true if there was a comma after the first statement. In this instance there would only be one interrupted preceding phrase that the qualifier could modify which would be "information that could lead to the identification of a child." Additionally, if the statute were as broad as the officer makes it then it would prevent a slew of body camera videos from ever being produced. This is arguably not the purpose of the statute. The purpose is implied within the subsection, which is to maintain the identity of a child who is in fact the "primary subject" or video.

Please let me know if you need anything additional related to this matter, and thank you for the for allowing me to have fun with statutory interpretation.

Deztany

**From:** McDonald, Gerald <GMcDonald@pselaw.com>
**Sent:** Tuesday, September 12, 2023 1:53 PM
**To:** Johnson, Deztany <DJohnson@pselaw.com>
**Cc:** Bly, Michael <MBly@pselaw.com>
**Subject:** statutory interpretation

Deztany, public record laws provides that the "restricted portions of a body-worn camera or dashboard camera recording" are not considered public records, and because of that, such recordings not something that gets released in a public records request. Revised Code section 149.43(A)(17)(a) defines "Restricted portions of a body-worn camera or dashboard camera recording" as:

"any visual or audio portion of a body-worn camera or dashboard camera recording that shows, communicates, or discloses any of the following:

(a) The image or identity of a child or information that could lead to the identification of a child who is a primary subject of the recording when the department of rehabilitation and correction, department of youth services, or the law enforcement agency knows or has reason to know the person is a child based on the department's or law enforcement agency's records or the content of the recording;

The Huber Heights police department is asking for an interpretation of this provision as there is a disagreement between two of the police record custodians. The whole argument stems around the second use of the word "or" in the definition. (The image or identity of a child **OR** information that could lead to the identification of a child...

One says basically that:

(1) "The image or identity of a child" cannot be release as it is not a public record, and
(2) "information that could lead to the identification of a child who is a primary subject of the recording when the department of rehabilitation and correction, department of youth services, or the law enforcement agency knows or has reason to know the person is a child based on the department's or law enforcement agency's records or the content of the recording" cannot be released as it is not a public record.

The other says basically that
(1) "The image or identity of a child who is a primary subject of the recording when the department of rehabilitation and correction, department of youth services, or the law enforcement agency knows or has reason to know the person is a child based on the department's or law enforcement agency's records or the content of the recording" cannot be released, and
(2) information that could lead to the identification of a child who is a primary subject of the recording when the department of rehabilitation and correction, department of youth services, or the law enforcement agency knows or has

reason to know the person is a child based on the department's or law enforcement agency's records or the content of the recording cannot be released.

IN a nut shell the first officer's interpretation is that NO image of ANY child is to be released. In addition, no information that could lead to the identity of a child that is a primary subject of the recording can be released. While the other officer says, the image of a child can be released unless the child is a primary subject of the recording...

It seems to me that if NO image of ANY child can be released, as the first officer believes, why would the next phrase be necessary? I tend to go with the second officer's interpretation. But that is just my two cents. I know there is statutory construction regarding use of "or" and segments, etc. but not sure what they are. Can you give me your legal interpretation of this statute using statutory construction rules. Which I believe are here somewhere: https://codes.ohio.gov/ohio-revised-code/chapter-1.

This is for Huber Heights HU001-28485 I would like it by next Tuesday (Sept 19) please.

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