

Critics fear public-records proposal could keep Ohio police records off limits indefinitely

By **Jeremy Pelzer**
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COLUMBUS, Ohio— Language tucked into the latest state budget proposal would create a wide range of new exemptions to public-records requests for law enforcement records and other documents.

The most controversial of the proposals are those regarding police files and attorneys' documents. While proponents say they're needed to help protect the integrity of police investigations and legal proceedings, critics fear the changes – if passed – would result in most police records being kept off-limits indefinitely from the public.

The proposed exemptions, added by the Ohio House shortly before it passed its budget plan earlier this month, now head to the Ohio Senate, where it remains to be seen whether they'll keep, alter, or reject the measures.

The House's budget plan would, if passed, create public-records exemptions for any information assembled by law enforcement ahead of a probable or pending criminal proceeding until the appeals process in the suspect's case is finished.

It also would expand the definition of a trial preparation record – which is already shielded from public-records requests – in a way that critics say could allow police to refuse to release files to the public.

The proposed restriction on releasing police records comes in response to [a 2022 Ohio Supreme Court ruling](#) holding that supplemental police reports, which include witness statements and officers' written initial impressions, are public records.

The Ohio Prosecuting Attorneys Association supports the proposed law-enforcement exemption. Lou Tobin, the group's executive director, said restricting the release of such police information is meant to protect the integrity of investigations and to promote the integrity of legal proceedings.

“If that stuff is subject to public records requests, it increases the risk of witness intimidation and increases the likelihood that people aren’t going to cooperate with an investigator,” Tobin said in an interview.

Tobin said he couldn’t point to any specific instance in which that’s happened, though he said he thinks police departments have tried to find ways around the Myers ruling, including not taking supplemental narratives at the same time they take the initial police report.

As for the proposed exemption on prosecutors’ notes, Tobin said the prosecuting attorneys association sought that because it wants to promote lawyers writing things down.

“If a lawyer is afraid that there’s going to be outside interference with their thought process, the risk is that they’re not going to write things down at all,” Tobin said. That would affect the quality of the prosecutor’s work, he said, which in turn would affect the quality of the trial that defendants receive.

But Mark Godsey, director of the Ohio Innocence Project and a University of Cincinnati law professor, said the wording of the proposed exemptions is so broad that he fears that they would result in police departments indefinitely blocking the public release of most records.

Even the restriction on prosecutors’ notes, he said, could be interpreted to limit the release of police files, as officials could argue that everything the police do is ultimately for prosecutors to use when they go to trial.

“They would basically stop anybody from getting public records, including media, and stop us from getting police files and things like that, even after the cases are over,” Godsey said.

It would also, Godsey said, hamstring the Ohio Innocence Project’s work to free wrongfully convicted Ohioans. For example, he said, supplemental witness statements obtained by his group [helped to free three East Cleveland men in 2018](#) after they spent two decades behind bars for a murder they didn’t commit.

Tobin rebutted that that he thinks opponents of the proposals are “being a little alarmist.”

Just as prosecutors don’t have access to defense lawyers’ notes, he said, defense lawyers shouldn’t be able to see prosecutors’ notes. He also waved off concerns that

police would exploit the proposed language to hold onto records indefinitely. “The public is still going to get it at some point,” he said.

A separate measure in the House’s budget plan would create a public-records exemption to prevent people from finding the location of burial sites of Native American bodies long held by the Ohio History Connection.

A [2023 ProPublica investigation](#) found that the Ohio History Connection – the state’s historical society -- had more than 7,100 human remains in disregard of a federal law, the third-most of any institution in the country.

Since then, the History Connection has, in consultation with tribal governments, started to bury those remains on land controlled by the organization, according to spokesman Neil Thompson.

The History Connection asked lawmakers for the public-records exemption, Thompson said, to ensure that people wouldn’t be able to find out where those burial sites are and dig them up.

“We don’t want these sites to be disturbed, because they are grave sites,” he said.

Other proposed public-records exemptions included the House’s budget bill would apply to:

- Records created by an assistive device used by a person with a disability, such as an assistive listening device, optical scanner, or Braille printer, so long as the record is used and accessible only by that person.
- All written and oral statements from a victim or victim’s representative to the state’s prisons agency in connection with a pending pardon, commutation, or parole