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# ***The Ohio Archivist***

Spring 2005 Volume 36 Number 1

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## Access to Public Records and OHRAB: House Bill 9

By Raimund E. Goerler

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“ Even as access to information fuels our modern economy, access to public records drives our democratic heritage of government ‘by the people, for the people, and of the people.’ Democracy thrives when citizens can know about government through the records that our elected officials and their staffs keep. Our efforts to foster democracy in the world must include supporting democracy in Ohio.”

These words were testimony in support of House Bill #9 to the House of Representatives’ Civil and Commercial Law Committee by the Ohio Historical Records Advisory Board on March 16, 2005. Sponsored by Representative W. Scott Oelslager, this bill proposes to revise the Public Records Law in the Ohio Revised Code (Section 149.43). It has aroused much attention and concern both at the statehouse in Columbus and in newspapers throughout Ohio. The purpose here is to review the origins of the bill, its content and its support by the Ohio Historical Records Advisory Board.

The Bill resulted from a survey of local government officials conducted by the Ohio Coalition for Open Government in April of 2004. Funded by a grant from the National Freedom of Information Coalition, a team consisting largely of newspaper reporters and representatives of radio stations visited public officials in Ohio’s 88 counties. They asked local officials for six types of records: county minutes, executive expense reports, police chief pay records, police incident reports, superintendent compensation records, and school treasurer phone bills. All of these requests were to test how well Ohio’s Public Records Law access requirements worked.

The survey produced mixed results. The journalists did inspect 246 records (50.1% of the valid requests) on the first day and another 13 (2.6%) on the next day. Sometimes, they had to comply with procedures that the Ohio Public Records Law, does not require. For example, they had to present requests in writing and show proof of identity. Honoring these measures yielded another 85 records (17.1 %) for inspection.

Nearly one third of the requests (30.2%) went unanswered for several reasons. Sometimes (4.1%) officials declared that the document requested was not a public record. Another reason (in 10.2% of the requests) was that staff were unavailable or too busy to respond. More often (15.9%), records did not appear at once because the officials directed the requests to attorneys or set long waiting periods. All in all, the Ohio Coalition for Open Government decided that Ohio's Public Records Law was not working well in the state

In House Bill 9, Representative Oelslager is seeking to improve the Public Records Law by proposing several changes. First, it requires the Attorney General to develop, provide, and certify educational workshops about the Open Records Law. These would take place every two years and elected public officials must attend. Second, it mandates that all public offices post records retention schedules in convenient places. Through the schedules, people would be able to know what records an office has and ask for it correctly. (Some of the requests in the survey failed because the records, as requested, did not exist.) Third, the bill states that if a public office denies a request because it is unclear, then the office must allow the requester to revise the query. Fourth, it forbids a public office to reject a request because the requester failed to provide proof of identity.

The most controversial parts of the Bill stipulate penalties when public officials fail to comply with lawful and reasonable requests for public records. Public officials must respond within a reasonable period of time. The response could include denying the request with reasons provided, asking for more information, or declaring when the records will be provided. If not satisfied with the response, the requester can turn to the courts and file a mandamus action against the public office. If successful, the aggrieved person may recover statutory damages of up to \$5,000 and court costs. An egregious violation of the Open Records Law could lead to punitive civil damages.

Because of its relationship to public records, the [Ohio Historical Records Advisory Board](#), whose twelve members are appointed by the Governor and represent public and private not-for-profit sectors in Ohio, discussed H.B. 9 at length. A principal reason for supporting the bill was the mission statement of

the Board, *“to serve the people of Ohio by advocating, nurturing, and advising programs that identify, preserve, and provide access to their documentary heritage, which enriches the culture and protects the rights of Ohioans.”* Thus, the Board wanted to support a public policy initiative that sought to improve access to public records.

Nevertheless, the Board felt that state legislators could improve H.B. 9. As written now, it does not improve the managing of public records to make them more readily available. Access to public records is difficult, even impossible, when records that should have been destroyed because their usefulness is gone hide records that have current or continuing importance to the public. Nor is access likely when records of long-term significance are in closets, basements and garages rather than in a place designed for storage and access. Records in digital format must be in software programs that keep and manage records efficiently while preserving their trustworthiness as evidence.

The Board fully supports educating public officials in the Public Records Law. They are both the stewards and gatekeepers of public records. However, public officials need to know not only about the legal requirements for open access but also about the requirements and best practices in managing public records. Thus, Board recommends that the workshops mandated in the Bill include information and even presentations by the State Archives about records retention and disposition and help available.

Rep. Oelslager’s bill correctly identified records retention and disposition schedules as critical instruments for access to public records. If published on the World Wide Web, for example, such schedules would transform access to public records from guesswork at an agency to efficient research from home or a public library. On-line schedules could be the paths for the public to find records even as on-line catalogs are the paths to information in our libraries.

However, officials and their staffs must develop and update records retention schedules. Like a catalog in a library, the value of that catalog or that schedule is only as good as the quality of the information provided. A catalog that does not list all books in a library is not helpful. Similarly, records schedules that are obsolete or fail to list all existing records are not useful as tools for public access.

Fundamentally, the Board believes that it is wiser to invest in managing records than paying penalties for failure to provide access. Financial support for managing public records has largely disappeared; a significant reason for public offices in not complying with the requests of the journalists in the

survey was lack of staffing. Similarly, local government records specialists, who visited counties and municipalities and reviewed and developed records retention schedules in coordination with the State Archives, have disappeared after years of cost-cutting. Even the position of State Records Administrator, who managed records retention scheduling in state government, has been cut out. (See [The LGR Program Functions and Staffing](#))

After the testimony, the Committee invited the Board to propose ways of funding a records program. Discussions are continuing both with legislators and such interested parties as the [County Archivists and Records Management Association](#) (CARMA). Some ideas have emerged. A state subsidy in support of managing public records would be ideal but in the current fiscal environment that limits initiatives, this seems unrealistic to all.

Another model is in a neighboring state, Kentucky. There, records programs draw on fees imposed on some transactions of county and local governments. Such fees exist in the Ohio Revised Code but do not affect directly the managing of records. Adding a dollar or two on existing fees (see Ohio Revised Code 317.32) collected by County Recorders would create a new stream of revenue. Part of this money could go to managing records at the county offices, including records retention scheduling, microfilming and digitization. Some should also support records management at other public offices within the counties, including the municipalities, townships, and school districts. In fact, many of the complaints about access to public records are at the most local levels of government.

Public officials need expertise as well as money to support records scheduling and access. One idea is to strengthen the local government records program of the State Archives by adding representatives who would work with officials in counties and municipalities. With added support, the State Archives would provide training and coordination as well as expertise in such complex matters as evaluating digital record keeping systems. A portion of the revenue should go to helping the State Archives assure that access to public records is uniform in all of Ohio.

These concerns aside, the Board stands in favor of House Bill 9. It improves and upholds the rights of Ohioans to their records and to their documentary heritage. All archivists and concerned citizens in Ohio should contact state legislators and support House Bill 9. At the same time, they should think about ways of improving the bill and providing more financial support for public records. Members of the Ohio Historical Records Advisory Board invite and welcome comments and new ideas.

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## H.B. 9 and Changes Proposed for Local Records Commissions

Pari Swift, Assistant State Archivist

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House Bill 9 has afforded many groups the opportunity to advocate for changes that they would like to see in the public records law (ORC 149.43). The Local Government Records Program of the Ohio Historical Society State Archives is no exception. Testimony by Attorney General Jim Petro and Ohio Historical Records Advisory Board (OHRAB) member Raimund Goerler opened the door for the Ohio Historical Society to pursue one such addition, not to the public records law, but to another section of Ohio Revised Code (ORC) concerning local records commissions.

Legislation governing the disposal of public records began in the 1950s with the establishment of county (ORC 149.38) and municipal (ORC 149.39) records commissions. Over time, functions and procedures of the records commissions changed or were added. In addition, records commissions were mandated for school districts (ORC 149.41) and townships (ORC 149.42). Most recently, the county records commission procedures were updated to include a section on notifying local historical societies of records ready for disposal. However, there are currently no established records commissions for libraries and other special taxing districts.

During testimony on H.B. 9, a Civil and Commercial Law Committee member questioned Mr. Petro as to whether quasi-public institutions fell under the confines of the public records law. Mr. Petro replied that quasi-public institutions should move toward openness and that his office could work to define standards for these groups. During later testimony, Mr. Goerler encouraged the committee to add records commissions for libraries and special taxing districts in order to make managing public records more systematic and uniform in Ohio. Committee Chairman Bill Seitz stated, following Mr. Goerler's testimony, that he was not aware that these two types of public entities did not have records commissions. As a result, he encouraged OHRAB to research and draft some language for H.B. 9 to include records commissions for libraries and special taxing districts.

Over the last few years, more and more special districts and quasi-public institutions are being urged to set up retention schedules and records policies. In fact, H.B. 9 would require that they have retention schedules readily available. These local governments, in turn, contact the Local Government Records Program for advice, but are often confused because they do not have a particular model to follow and don't know for sure if they are public for the purposes of the public records law. Most choose to follow procedures similar to those set forth for counties, municipalities, school districts and townships. However, since H.B. 9 seeks to be a comprehensive law concerning access to public records in Ohio, formally establishing these additional records commissions would be a step in that direction.

It is important to understand that these desired changes would not take away local autonomy for any specific records retention and disposition decisions. It would simply make the general procedures more uniform.

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## County Response to H.B. 9

Pamela Spetter Schwartz, Warren County Records Manager & Archivist

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As the Records Manager and Archivist of Warren County, Ohio, I would like to respond to the 2004 state-wide audit of public records law compliance conducted by the Ohio Coalition for Open Government (OCOG,) an arm of the Ohio Newspaper Association, and the subsequent House Bill 9.

I applaud the decision of the OCOG to survey access to public records in Ohio and to spotlight the importance of adherence to public records law; however, I found misleading the charts and figures that appeared in newspapers across the state as part of the coalition's report. While some newspaper contributors clearly identified the agencies responsible for the records requested by the coalition's auditors, inaccurate charts were published illustrating that records of the police departments, school districts, and municipalities fell under the auspices of the counties in which they were located. The percentages of success rates in obtaining requested information should have been charted to identify the level of government by which the records were generated. Additionally, the OCOG should have identified which government agencies employed professional records and information managers and archivists so that the reader might notice a pattern of compliance in relation to the administrative presence of government records professionals.

Now House Bill 9, in response to reports of the OCOG, does not address funding of proposed, mandatory records management programs or the establishment of the Ohio Historical Society as the technical and administrative authority on public records law because the OCOG did not report cause for such improvements. Instead, House Bill 9 mandates fines for non-compliance with the proposed law.

It would be better to fund records management at the state and local levels to ultimately improve access to information than to pay fines for non-compliance. Successful, professional records management programs in Ohio and the resources they utilize must be identified and studied by our legislators as a supplement to the survey of the OCOG.

Government records professionals provide a central, standard approach to information management that works as evidenced by the high marks received by professionally administered programs in the audit. When the results are studied from our perspective, they will demonstrate that we already incorporate the methods that our legislators propose in House Bill 9 and that with a financial boost, the methods can be incorporated throughout the state of Ohio.

Our community of government records and archives professionals is faced with the responsibility to advocate the establishment of a funding mechanism that would subsidize the proposed records management programs and to analyze existing, successful programs and their technical and administrative support networks in order to supply our legislators with the necessary information to re-define House Bill 9.

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## House Bill 9 Seeks to Update Public Records Law

Pari Swift, Assistant State Archivist

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On 24 January 2005, Representative Scott Oelslager (Canton, R) reintroduced legislation that would strengthen the Public Records Laws (Ohio Revised Code 149.43), require training for elected officials, modify the definition of a “record” and impose fines on governments for non-compliance. For several weeks in March and April, proponents, opponents and interested parties, including the Ohio Attorney General, the Ohio Newspaper Association, professional organizations, school districts and citizens, gathered at the Statehouse to make their praises and concerns about H.B. 9 known to the Civil and Commercial Law Committee.

Rep. Oelslager provided sponsor testimony on 9 February 2005 by highlighting the following additions to the current law:

- Required training for all elected officials
- All employees will be required to acknowledge receipt of the written policy.
- Retention schedules should be readily accessible in order to assist in clarifying vague records requests, thus gaining a faster response time.
- Public offices must provide a reason for rejecting a public records request.
- Offices cannot require written requests, which can sometimes intimidate a requestor. Fines of \$250.00 per day can be assessed for failure to respond to a request in a reasonable amount of time.
- Citizens can be awarded attorney fees for successful mandamus actions, thus encouraging citizens to hold governments responsible for their required function of providing access to public records.
- Negotiating mechanisms for the public office and requestor to work together to define an appropriate records request
- “Anti-corruption” clause added to definition of a “record” to

close a loophole that had allowed for documents of illegal activities taking place in a public office to fall outside the realm of public records because they do not document a “function of the office.”

Related testimony has focused on several reoccurring themes.

#### *10-Day Time Frame*

HB 9 offers a 10-day time frame before a requestor can file a mandamus action against a government. Under the current law, a requestor can file a mandamus action at any point that they feel they’ve been aggrieved. The theory is that 10 days should be enough time for a government to get a legal opinion about the release of a record, if such opinion is necessary. The bill does not specify whether the 10-day time frame starts when the request is made or when the legal opinion is issued. Rep. Oelslager is open to clarification on this point. Representatives from several local governments misinterpreted the 10-day time frame as a mandate for making records available and expressed concerns about this overtaxing their staff and resources. In actuality the courts would still determine whether the law’s “prompt” and “reasonable” requirements were met by a government. Rep. Oelslager, along with several committee members will be working on an amendment to clarify voluminous and harassing requests to alleviate some of the apprehension being expressed by local governments.

#### *Required Training*

The Ohio Attorney General’s Office strongly supports the training requirements set forth in HB 9. The Attorney General’s Office conducted 12 public training sessions in response to last April’s public records audit and an additional 50 private training sessions. As it is currently worded, each elected official would be required to attend training on the public records law. The training would be developed and certified by the Attorney General’s Office, which has the option to charge a fee for such training. While most local governments have testified in favor of the training in spirit, they feel that there needs to be more clarification on who pays for the training and how much training is needed. Attorney General Jim Petro noted that it would most likely be the individual governments that would pay the training fees. Thus, the training fees would ultimately be paid by the taxpayers. Several people have testified that it is not the elected officials that respond directly to public records requests, but instead the front office workers. Perhaps it is the front office workers who should receive the training. The counter argument is that the Attorney General’s training would also cover the Open Meetings Act, which does directly affect elected officials. On numerous occasions, Committee Chairman Bill Seitz has brought up the notion of each government

having a records custodian to handle training and other records related issues. One local government representative offered a tiered training approach depending on the job function, level of knowledge, and use of electronic records in conducting business. As it is currently worded, the bill does not put a cap on training fees or specify penalties for failure to attend training.

### *Fines and Attorney Fees*

There have been many concerns expressed by citizens and public employees alike concerning the issuance of fines and attorney fees for non-compliance.

#### Government

Attorney General Jim Petro expressed reservations about the \$250.00 day-to-day penalties. He feels that some standards and “good faith” efforts on the part of the government need to be taken into account. He also wants clarification on the courts’ discretion to determine “fair and legal” fees. Other government officials expressed fear that the provisions would lead to financial exploitation of governments through numerous and voluminous requests. The governments could spend all their time and resources fighting mandamus actions or paying the mandated fines and legal fees. Several committee members have been questioning the validity of adding a section to the bill that would require citizens to reimburse the government when the government was found to have acted properly. They feel that this might discourage frivolous or nuisance requests.

#### Citizens

To the average citizen, filing a mandamus action is the only way to enforce their right to public records. However, in the past, attorney’s fees were awarded at the judge’s discretion. They were not mandated. Even if the citizen won, they could not be guaranteed to recover their costs, which made them hesitant to enforce their rights to public records. Most citizens that offered testimony felt that they paid the costs for enforcing their rights whether the government was right or wrong since it is their tax dollars that the government uses to pay for court costs. In essence, citizens pay for the government to fight against them.

### *Written Policy*

During testimony, nobody has come out against the requirements of a written policy for handling public records requests. Most agree that it is a good and necessary component of the public records law. The City of Gahanna Records Commission, however, wishes to see more specific instruction as to what

should be included in the written policy. As it is currently worded in HB 9, there are only three provisions, as follows, for what should not be in the policy

- An office cannot limit the number of records that it will make available to an individual.
- An office cannot limit the number of records that it will make available during a fixed time frame.
- An office cannot set a time limit before it will respond, unless it is less than eight hours.

The City of Gahanna feels that an effective policy that ensures compliance should be specific enough for employees to understand, but have some general flexibility for unusual circumstances. They also suggest that one person be assigned the overall responsibility for records management, even if the duties are divided among many employees.

### *Conclusion*

With the exception of a few aspects, such as mandatory training and additional fines for non-compliance, HB 9 simply tries to further clarify what is already implied and the intent of the public records law. While most of those who provided testimony were in favor of some sections of HB 9, but not in favor of other sections, many used their testimony as an opportunity to express concerns over certain aspects of the public records law in general. Of particular concern was the availability of employee personal information and not requiring requestors to identify themselves. Both of these aspects taken together put public employees at personal risk, with no paper trail or method of gaining leads on harassing incidents.

As a result of several pieces of testimony and corresponding committee member interests, the Civil and Commercial Law Committee, headed by Chairman Seitz, is continuing to investigate several avenues in order to strengthen and complete the bill, including:

- Research on the awarding of attorney fees
- Setting caps on training fees and required hours
- Defining gamesmanship and harassing/voluminous requests to clarify the intent of the law to provide public records for citizen use, so as to reduce the amount of litigation in this area
- Define where quasi-public entities fall under these sections of the law
- Adding records commissions for libraries and special taxing districts

- Requiring payment for one request before another from the same requestor can be fulfilled
- Adding additional closed records to 149.43
- Consulting the Supreme Court and Judicial Conference concerning the section of the bill that seemingly takes court records out of the public records law and puts them back into common law provisions
- Funding for records management activities
- Additions to the section on written policies
- Research on Indiana's Public Access Counselor program

H.B. 9 is a work in progress. It is encouraging to see the House Committee taking such an active interest in the bill. They have requested additional research and information from several parties, including the Ohio Historical Records Advisory Board, which is to follow up with the committee on ideas for funding records management as the best means to providing efficient access to public records. It has become clear that what was originally thought to be a bill on the fast-track, will actually take some time to be further crafted into a comprehensive bill to update Ohio's public records law.

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# The OHS Local Government Records Program: Functions and Staffing

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The Local Government Records Program of the Ohio Historical Society currently has one full time staff member, who also has responsibilities relating to the State Archives. The Local Government Records Program is responsible for the following functions:

- Review, approve and file retention schedules and disposal lists (RC-1, RC-2, RC-3 forms, and court disposition notices)
- Appraise and accession local government records into the State Archives
- Coordinate records transfers to Network Centers or local historical societies
- Process local government records collections to make them available to the public
- Provide advice and assistance, via phone, email, letters and in person visits, to local government agencies regarding records issues, including electronic records issues
- Provide training workshops on records management, electronic records and disaster preparedness
- Create, revise, update manuals and instructional materials
- Administers County Archivists and Records Managers Association (CARMA)

In the past, when the Network Centers were staffed, the Local Government Records Program was able to get out into the field more often. Representatives were able to go to the governments and help with the inventory process or make recommendations for managing records effectively. Although these services are often still requested, it is impossible to do so at current staffing levels.

### *LGRP Staffing Levels, 1970 - present*

Year	Staff	Year	Staff	Year	Staff	Year	Staff
1970	1	1980	7	1990	5	2000	1.25
1971	1	1981	8	1991	4	2001	1.33
1972	0	1982	6	1992	3	2002	1
1973	1	1983	5	1993	3	2003	1
1974	1	1984	5	1994	4	2004	1
1975	7	1985	4	1995	4	2005	1
1976	7	1986	4	1996	4		
1977	7	1987	4	1997	3		
1978	7	1988	4	1998	3		
1979	7	1989	4	1999	3		

In recent years, the LGRP has tried to maintain a greater web presence by providing much needed tools, even a workshop, online. In October 2004, the "Local Government Records: Just the Basics" video workshop was made available to alleviate the need for the staff to travel and to allow local governments to always have the instructional information close at hand.

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## Legislative Update

Pari Swift, Assistant State Archivist

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### **HB 204 Makes County Records More Accessible to Local Historical Societies**

On 5 November 2004, a new law became effective that could benefit local historical and genealogical societies in Ohio. House Bill 204 added a clause to the Ohio Revised Code (ORC) Section 149.38 requiring county records commissions to notify the county historical society and other public or quasi-public institutions, agencies or corporations, of the county's intent to dispose of records, after the Ohio Historical Society (OHS) has been given statutory notice. This notification is typically provided to OHS on the Certificate of Records Disposal (RC-3) at least 15 days in advance of the intended disposal date. Any records not selected by OHS can be selected for preservation by local historical societies. According to ORC 149.31 (A), any records transfer would need to be preceded by a Local Government Records Deposit Agreement, signed between the local historical society and OHS. The agreement states that the local historical society will provide proper records storage conditions and provide access to the records per the Public Records Law, ORC 149.43. Historical societies and other public or quasi-public institutions wishing to receive notice should contact their county's records commission concerning local procedures for providing notice and time frames for selecting records. Those with questions about records transfers should contact Pari Swift, Local Government Records Program, Ohio Historical Society, at (614) 297-2553 or pswift@ohiohistory.org.

### **House Bill 148 – Township Records**

House Bill 148 took effect 5 November 2004. It allows boards of township trustees to, once a quarter, request copies of records from the township clerk if the clerk does not keep them in a public office. The board must provide the clerk with the dates or types of records that it is requesting. The legislation also notes that this clarification does not diminish the rights of any trustee to inspect township records per the public records law, ORC 149.43.

The initial text of the bill would have required the township clerk to keep the records of the township in the township hall or the primary building in which the board of trustees meets. This initial provision could have gone a long way

in ensuring the long-term survival of historically significant township records. Township records often end up in private hands or in auctions, such as eBay, because they remain in the houses of former clerks and never get transferred to the new clerks. Descendants or the new homeowners often discover township records when they are cleaning out attics and basements. Unfortunately, I have seen, and authorized disposal of, township records that have been rendered illegible and unsafe for handling by storage in attics or garbage bags in barns. By requiring that the records be maintained in a public facility, the government could have maintained better long-term control over the records. I've also often heard complaints for citizens who cannot access township records because the clerk does not keep normal hours and the records are not maintained in a public building.

The counter arguments, the first of which is bolstered by 1986 Attorney General Opinion 86-057, are that township clerks are often part-time and work from home or the townships do not have good facilities. Being required to maintain the records in a public facility would make it more difficult for clerks to effectively do their jobs and would be costly to those townships that would have to build or rent facilities for storage.

By so drastically altering the original intent of the bill, it appears that legislators attempted to reach a compromise between administrative and fiscal efficiency for townships, clerks' accountability, and the public's, and even the elected officials themselves', right to records under the public records law.

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## Candidate's Statements

[Printer Friendly Version](#)**President**

*We are all aware of the dilemma of funding cuts in all aspects of the state's budget. What steps would you take to improve the visibility of archives and archivists in the eyes of politicians and those who control the funds to many historical institutions in the State of Ohio? How can we help to improve the funding situation?*

*Candidate: Jane Wildermuth*

The state of Ohio has been facing budget cuts for a number of years. Higher education, museums, libraries, and archives have all been affected. As president of the Society of Ohio Archivist, I would try to improve the visibility of archives and archivists in the eyes of politicians and others by simply making them aware of what we can do for them. Our collective knowledge in the fields of records management, archival theory and practices, research, and electronic records issues is strong. If more politicians knew of the benefits archivists could provide them, I think our support from them would be stronger.

**Vice President**

*What strategies could SOA use to increase knowledge about archives among the general public in Ohio?*

*Candidate: Angela O'Neal*

Given the worsening funding climate facing Ohio's cultural heritage repositories and funding agencies such as NHPRC, it is critical that SOA raise awareness of the work we do to collect, preserve, and provide access to our Ohio's rich history. Archives Week and History Day are excellent outreach programs for SOA. We should continue printing an Archives Week poster and expand its distribution to schools, public libraries and other institutions. We should also hold at least one program during Archives Week, perhaps in cooperation with the Ohio Humanities Council Speaker's Bureau. As Vice-President, I will work with the committees to grow our Archives Week and History Day programs.

As an all-volunteer professional organization, however, it is difficult to reach the public on our own. We need to identify and collaborate with our key stakeholders, including our membership, archives and libraries, and other professional organizations. The Ohio Historical Records Advisory Board (OHRAB), Ohio Association of Historical Societies and Museums (OAHSM), the Academic Library Association of Ohio (ALAO) and local chapters of the Archives and Records Management Association (ARMA) are just a few groups that we can cooperate with to develop archival programs and advocate for increased funding for archives. We began building these relationships with the 2005 Spring Program, where we partnered with more than a dozen other organizations, including OHRAB and the Ohio Humanities Council. As Vice-President, I will continue to work with our partners to enhance our existing programs and to develop a cohesive approach to advocating for archives in Ohio.

### **Secretary**

**What are your qualifications for secretary and why do you want to continue in the position?**

*Candidate: Gillian Hill*

Records and Information Manager / Archivist, Greene County. Degrees: BA and MA, Wright State University. Member: SOA (Council 1996-98, Secretary 2001-present), SAA, MAC, Miami Valley Archives Roundtable (Chair 1995-98), Society of Archivists (UK), West Sussex Archives Society (UK) (Treasurer 1983-91), ARMA International (Regional Coordinator 2003-present), Archives ISG Leader 1999-2001), ARMA Greater Dayton Chapter (Director 1994-95, Secretary 1995-97, Vice-President 1997-98, President 1998-99, Chair 1999-2000,), Records Management Society of Great Britain, SAA/ARMA Joint Committee (Vice Chair 2000-01, Chair 2001-2003).

I would welcome the opportunity to continue as Secretary of SOA for a further term of office. I have very much enjoyed my work for the Society. I have regularly attended Council meetings and have submitted minutes in a timely fashion. I feel strongly that accurate and comprehensive minutes provide both the backbone of the history of the Society, and accountability to its members.

Prior to being elected to my last period of office, I made a goal that, if elected, I would prepare a records retention schedule for the records of the Society. I explained that this document would enable outgoing Council members to more easily determine which records are operational (to be passed on to their successors), which have enduring value (to be sent to the Society's archives), and which are merely ephemeral papers (to be considered for destruction). The schedule was written, and Council approved it. If elected this year (and even if

not), I would be happy to assist my colleagues going off Council with the disposition of the records they accumulated during their term of office, using the recommendations in the schedule.

## **Council**

***What issues most directly affect archives in Ohio at the moment? Explain how these issues can be addressed in both individualistic terms and as a member of SOA.***

*Candidate 1: Vic Fleischer, Youngstown State University*

While many dilemmas currently face information managers, such as new legislation that limits access to public records, the issues that most directly affect archivists in the State of Ohio at this moment are decreased funding, diminishing personnel, and the challenges posed by electronic records.

In individualistic terms, these issues can be addressed in several ways. Archivists can ameliorate the first issue by practicing fiscal responsibility, by becoming successful grant writers and fundraisers, and by communicating the importance of historical records to our administrators. The second issue can be handled on an individual level by utilizing the assistance of students, interns, and volunteers; and, if funding is available, by outsourcing certain projects. The last issue can be resolved on a personal level by educating ourselves on electronic records, by implementing what we learn, and by providing training to those individuals who create and manage digital media.

These issues can also be addressed as a member of SOA. In order to improve the financial crisis, it is crucial to follow OHRAB's recommendations to "articulate the importance of records to Ohioans and those who allocate the resources" and to "increase public awareness of and interest in Ohio's historical records." We can accomplish this task by increased marketing and promotion of our individual repositories, of SOA, and of archival records in general through such programs as Archives Week. In addition, it is essential to collaborate with national and local archival and historical organizations such as SAA, MAC, OHRAB, OAHSM, and NAGARA. Eventually, these efforts will also help to alleviate the quandary of diminishing personnel. In the interim, however, we must focus on training and developing students, volunteers and paraprofessional staff throughout the State by participating in SOA's mentoring program and by encouraging these individuals to attend SOA's high quality low-cost workshops. To successfully manage the issue of electronic records, it is necessary to work with the Ohio Electronic Records Committee—and to some degree the Electronic Records Section of SAA and the Electronic Records Archives of NARA—to implement and promote their recommendations amongst electronic records creators throughout the State.

Such issues are only a few problems facing archivists in the Buckeye State at the moment. We are also engaged in a seemingly incessant struggle to grasp emerging technologies. However, while these new tools are transforming archives, they are also revolutionizing libraries and the way we view and retrieve information. As more library materials (print and audio books, journals, videos, and government documents) are becoming available via the Web through services such as JSTOR, EJC, and NetLibrary, archives and special collections are increasingly assuming a more prominent role in our libraries and our organizations. I have already personally witnessed this shift and growing trend at my institution. While these developments are certainly encouraging we should not relax and ride the wave, but instead endeavor to accomplish the tasks listed above. As a result, we will indeed ensure a very bright future for ourselves, our successors, our repositories, and our profession.

*Candidate 2: Miriam Kahn*

There are two major issues affecting archives in Ohio today. They are Public Records Law and Budgets. Since 2001, state and county legislatures have been looking at and actually restricting access to public records. Some agencies use the increase in identity theft as justification for restrictions to various records including liens and court cases; other agencies, such as county health departments are citing HIPPA. These restrictions also apply to records held in archives throughout the state. HB 9, introduced on January 25, 2005, seeks to revise Ohio's Public Records Law by expanding the circumstances for restricting, redacting and refusing to retrieve public records. Restricting access to public records places increased work and processing demands upon Archivists who house, maintain, and work with public records. The second issue is our state's ever-shrinking budget. Ohio is bracing for a third round of budget cuts that threaten, yet again, the financial health of our cultural institutions by limiting purchasing and staffing. If the large institutions have been forced to limit the hours they are open and the number of professionals they employ, the smaller ones are struggling just to keep a professional on contract. Additional budget cuts threaten to cripple Archivists' ability to provide access to records and documents by any means.

As professional Archivists we must fight for the public to have a right to access public records and information. Legislators hear loud voices, so we must write and speak out about the freedom to access information of all kinds in our state. In the same vein, we must work to justify our budgets by educating our patrons and legislators as to the importance of archives, historical records and the information they contain that will be lost if archives cannot maintain them for present and future generations.

*Candidate 3: Mackensie Wittmer*

Archivists are busy people trying to do a lot for our institutions with little resources. Those demands will only grow with increasing budget cuts. That's why I believe SOA is so important – an affordable source for professional development. As a council member, I will work to offer practical and engaging programming across the spectrum of skill levels. I also will work to strategically grow the SOA membership base, increase member participation, and improve member satisfaction. As a young professional, I will work to address the variety of issues surrounding the transition from student to professional. Finally, I will work to forge stronger relationships between professional archivists, amateur archivists, and archival students.

I am eager to serve SOA and its membership. At Wright State, I started the SAA student chapter and served as its first president, a valuable experience in generating excitement and support from the school and students. I hope to bring that same energy and excitement to SOA. I have worked in non-profit fundraising for six years and hope to combine my fundraising knowledge with my education to benefit SOA and its members. That may include introducing a wider variety of fundraising programming or serving as a resource for fundraising issues. For the last four years, I have served on a state chapter board of an national professional organization for fundraisers. On that professional board, I have served as Treasurer for three years developing and implementing a scholarship and awards program. I also have served on the by-laws revision committee, planned regional networking events, and served on the state-wide conference committee. I hope to use my experiences with that professional board to partner with the other SOA council members to create a valuable member-centered organization.

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## Digitization Symposium, Fall 2005

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The Ohio Preservation Council and the Ohio Library Council are co-sponsoring a digitization symposium this Fall, *Basic Considerations for Digitization: Providing Access to Special Collections*.

The symposium will include a moderated panel to help librarians, archivists and others better understand how digitization can assist with access, preservation and management of special collection resources. Topics to be covered will include basic start-up needs, selection of items for digitization, preparation of original documents, preservation of the electronic data, its migration and future access.

**Panelists:**

Susan M. Allen – Worthington Memory Project Manager, Worthington Libraries

Judy Cobb – OCLC Digital Archive

Geoffrey D. Smith – Professor and Head of Rare Books and Manuscripts, OSU

Amy McCrory – Archivist, Cartoon Research Library, Wexner Center, OSU

The symposium will be held on Thursday, September 16, 2005 from 9:00am to 3:00pm at the Medical Heritage Center, The Ohio State Univeristy, Columbus, Ohio. Registration will be available soon at: <http://opc.ohionet.org/>. An information packet, refreshments and lunch are included in the cost of registration. Registration for OPC and OLC Members is \$35.00; Non-Members is \$65.00. Only 125 seats are available.

Registrants are encouraged to send questions for the moderated panel portion of the program to [fhonnef@bgnet.bgsu.edu](mailto:fhonnef@bgnet.bgsu.edu), prior to September 16, 2005.

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## Lloyd Library and Museum Exhibits Works of J. Augustus Knapp, 1853-1938, Local Painter and Illustrator

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The Lloyd Library and Museum announces its Spring Exhibition, *Plates of Fungi: Paintings by J. Augustus Knapp Commissioned by Curtis Gates Lloyd*, on display March 1 through June 30, 2005. This exhibit demonstrates an interesting combination of art in service to both science and literature. It also presents for the first time select works of J. Augustus Knapp, a contemporary of Frank Duvenek and Henry Farney who studied at the McMicken School of Design in Cincinnati.

The archival collections of the Lloyd Library and Museum include the papers of Curtis Gates Lloyd, youngest of the



Lloyd Brothers. There among the correspondence, financial records, writings, and photographs is a large portfolio containing paintings of mushrooms. A typewritten sheet of paper inside reads: “Fungi: 40 Plates Hand-Painted by John Augustus Knapp Commissioned by Curtis Gates Lloyd.” With that exception, the archives remain silent about these exquisite, and scientifically accurate, works of art.

This exhibit includes 12 of the 40 Knapp paintings along with other pictorial representations of fungi from the Lloyd Library’s collections. Also on display are selected mycological writings by Curtis Gates Lloyd and brief biographical information on the Lloyds and Knapp. Knapp and the Lloyd brothers, John Uri, Nelson Ashley, and Curtis

Gates (founders of the Lloyd Library and Museum), were friends who collaborated on many projects. In addition to the “Plates of Fungi,” Knapp illustrated several of John Uri Lloyd’s novels; the exhibit includes an original illustration for Lloyd’s novel *Etidorpha*, in which fungi figure prominently.

### **Lloyd Library and Museum Announces Expanded and Enhanced Website**

The Lloyd Library and Museum is pleased to announce important additions and enhancements to its website. New features include databases never before available and now accessed only on our website. They are the *Eclectic Medical Journal Index*, created by the Lloyd Staff, and *Pharmacists in World War II*, created and maintained by Lloyd Scholar, Dennis Worthen, in conjunction with his book, *Pharmacy in World War II*. The *Eclectic Medical Journal Index* is the only one available for this Cincinnati publication and indexes its entire run of 97 volumes published from 1849 to 1937. *Pharmacists in World War II* includes over 11,000 pharmacists, pharmacy students, and those returning from the military on the GI Bill.

Also new is our first online exhibit—a virtual representation of the Lloyd’s successful 2003-2004 exhibit *Mining the Lloyd: Book Artists Reveal Secrets and Treasures from the Lloyd Library and Museum*. The Lloyd collaborated with local artists Susan Brumm and Diane Stemper in inviting book artists to choose a text from the library’s collection and use it as an inspiration for a new creation. The online exhibit is a reproduction of the exhibit catalog and features color photographs of the artists’ books, their statements, and the title of the Lloyd text that inspired the work. Introductions from co-curators, Brumm and Stemper, explore the relationship between science and art, making the case for a visual arts display within a scientific context.

Another improvement has recently been negotiated with the University of Cincinnati Libraries that makes searching Lloyd’s holdings through UC’s online catalog easier for our patrons. Accessed from our website, Lloyd’s catalog records have been available through UC’s UCLID online catalog for several years, although up until recently it was not possible to search only Lloyd holdings. One can now change location to the Lloyd Library and Museum before searching, which eliminates holdings from other UC libraries or affiliates and returns results only from the Lloyd.

Other enhancements have been made to simplify access and provide for more content. For instance, there is a separate section for Lloyd news which

includes information about events and exhibits, feature articles and headlines, as well as all press releases issued from the Lloyd. There is also an expanded section for the Lloyd Scholar with more information about his publications, projects, activities, and a biographical sketch. Our history found in “About Us” now includes all Lloyd Showcases written by our scholar, which provide supplementary chapters of the library’s past, highlighting several different biographical aspects of founder John Uri Lloyd.

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## President's Message

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With the close of my second and final term it is entirely appropriate to salute the people who have work diligently to keep SOA rolling, for without them we could not get anything done.

Charlie Arp has served as Vice President for the last two years even as he has taken on a new job more related to records management and, as a result, has decline a run for the Presidency. While a disappointment, as I know Charlie would make a wonderful officer, I know he will continue to provide valuable input to the organization. Charlie also coordinated the creation of an SOA student Chapter at Kent State University.

Gillian Hill has done an excellent job as Secretary and provided needed consistency.

Judith Wiener has seen that our economy runs smoothly and served as an excellent hostess for our annual meeting last spring.

Our newsletter, "The Ohio Archivist," remains a top publication under the guidance of Judith Cobb, who has asked to pass on the torch after five years of diligent and careful work. She has also provided us with free space to hold our Council meetings at OCLC and chaired the Public Information Committee.

Anna Heran has contributed excellent coordination for our educational program and is a factor for our treasury being so healthy.

Laurie Gemmill, until recently the State Archivist and now with OCLC, has helped considerably with Archives Week.

Shari Christy has done a wonderful job coordinating this spring's conference at Wright State University. Angela

O'Neal and Jane Wildermuth have also put in a great deal of work for the conference.

Christine Crandall had the unenviable task of heading the nominating

committee, yet with tenacity put together a slate of candidates.

Thank you, thank you, thank all of you!! The last two years have been busy for all of us in our personal lives and in the activities of our organization. We have accomplished a great deal: a treasury in better shape than ever; excellent annual conference programming; continued support to the National Coalition of History; points made regarding the selection of the next National Archivist; the creation of our first student chapter; support for the budget of the Ohio Historical Society; participation in two Building Connections Conferences; and, recent (and I hope) on-going input regarding House Bill 9 regarding the revision of sections of the public records law in Ohio. I strongly urge the membership to take a close look at H.B. 9 for it will touch upon all our jobs. We can work together with the Ohio Historical Records Advisory Board, the media, county and state officials, and legislators to help make this Bill strong, but fair. The most important suggested addition to the Bill to date is to institute a filing fee to be used as a way to pay for the servicing of records. So, let us make ourselves heard!

With that, I must simply add my thanks for the privilege of serving the Society of Ohio Archivists.

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# ***The Ohio Archivist***

Spring 2005 Volume 36 Number 1

## Access to Public Records and OHRAB: House Bill 9

By Raimund E. Goerler  
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“ Even as access to information fuels our modern economy, access to public records drives our democratic heritage of government ‘by the people, for the people, and of the people.’ Democracy thrives when citizens can know about government through the records that our elected officials and their staffs keep. Our efforts to foster democracy in the world must include supporting democracy in Ohio.”

These words were testimony in support of House Bill #9 to the House of Representatives’ Civil and Commercial Law Committee by the Ohio Historical Records Advisory Board on March 16, 2005. Sponsored by Representative W. Scott Oelslager, this bill proposes to revise the Public Records Law in the Ohio Revised Code (Section 149.43). It has aroused much attention and concern both at the statehouse in Columbus and in newspapers throughout Ohio. The purpose here is to review the origins of the bill, its content and its support by the Ohio Historical Records Advisory Board.

The Bill resulted from a survey of local government officials conducted by the Ohio Coalition for Open Government in April of 2004. Funded by a grant from the National Freedom of Information Coalition, a team consisting largely of newspaper reporters and representatives of radio stations visited public officials in Ohio’s 88 counties. They asked local officials for six types of records: county minutes, executive expense reports, police chief pay records, police incident reports, superintendent compensation records, and school treasurer phone bills. All of these requests were to test how well Ohio’s Public Records Law access requirements worked.

The survey produced mixed results. The journalists did inspect 246 records (50.1% of the valid requests) on the first day and another 13 (2.6%) on the next day. Sometimes, they had to comply with procedures that the Ohio Public Records Law, does not require. For example, they had to present requests in writing and show proof of identity. Honoring these measures yielded another 85

records (17.1 %) for inspection.

Nearly one third of the requests (30.2%) went unanswered for several reasons. Sometimes (4.1%) officials declared that the document requested was not a public record. Another reason (in 10.2% of the requests) was that staff were unavailable or too busy to respond. More often (15.9%), records did not appear at once because the officials directed the requests to attorneys or set long waiting periods. All in all, the Ohio Coalition for Open Government decided that Ohio's Public Records Law was not working well in the state

In House Bill 9, Representative Oelslager is seeking to improve the Public Records Law by proposing several changes. First, it requires the Attorney General to develop, provide, and certify educational workshops about the Open Records Law. These would take place every two years and elected public officials must attend. Second, it mandates that all public offices post records retention schedules in convenient places. Through the schedules, people would be able to know what records an office has and ask for it correctly. (Some of the requests in the survey failed because the records, as requested, did not exist.) Third, the bill states that if a public office denies a request because it is unclear, then the office must allow the requester to revise the query. Fourth, it forbids a public office to reject a request because the requester failed to provide proof of identity.

The most controversial parts of the Bill stipulate penalties when public officials fail to comply with lawful and reasonable requests for public records. Public officials must respond within a reasonable period of time. The response could include denying the request with reasons provided, asking for more information, or declaring when the records will be provided. If not satisfied with the response, the requester can turn to the courts and file a mandamus action against the public office. If successful, the aggrieved person may recover statutory damages of up to \$5,000 and court costs. An egregious violation of the Open Records Law could lead to punitive civil damages.

Because of its relationship to public records, the [Ohio Historical Records Advisory Board](#), whose twelve members are appointed by the Governor and represent public and private not-for-profit sectors in Ohio, discussed H.B. 9 at length. A principal reason for supporting the bill was the mission statement of the Board, "*to serve the people of Ohio by advocating, nurturing, and advising programs that identify, preserve, and provide access to their documentary heritage, which enriches the culture and protects the rights of Ohioans.*" Thus, the Board wanted to support a public policy initiative that sought to improve access to public records.

Nevertheless, the Board felt that state legislators could improve H.B. 9. As written now, it does not improve the managing of public records to make them more readily available. Access to public records is difficult, even impossible, when records that should have been destroyed because their usefulness is gone hide records that have current or continuing importance to the public. Nor is access likely when records of long-term significance are in closets, basements and garages rather than in a place designed for storage and access. Records in digital format must be in software programs that keep and manage records efficiently while preserving their trustworthiness as evidence.

The Board fully supports educating public officials in the Public Records Law. They are both the stewards and gatekeepers of public records. However, public officials need to know not only about the legal requirements for open access but also about the requirements and best practices in managing public records. Thus, Board recommends that the workshops mandated in the Bill include information and even presentations by the State Archives about records retention and disposition and help available.

Rep. Oelslager's bill correctly identified records retention and disposition schedules as critical instruments for access to public records. If published on the World Wide Web, for example, such schedules would transform access to public records from guesswork at an agency to efficient research from home or a public library. On-line schedules could be the paths for the public to find records even as on-line catalogs are the paths to information in our libraries.

However, officials and their staffs must develop and update records retention schedules. Like a catalog in a library, the value of that catalog or that schedule is only as good as the quality of the information provided. A catalog that does not list all books in a library is not helpful. Similarly, records schedules that are obsolete or fail to list all existing records are not useful as tools for public access.

Fundamentally, the Board believes that it is wiser to invest in managing records than paying penalties for failure to provide access. Financial support for managing public records has largely disappeared; a significant reason for public offices in not complying with the requests of the journalists in the survey was lack of staffing. Similarly, local government records specialists, who visited counties and municipalities and reviewed and developed records retention schedules in coordination with the State Archives, have disappeared after years of cost-cutting. Even the position of State Records Administrator, who managed records retention scheduling in state government, has been cut out. (See [The LGR Program Functions and Staffing](#))

After the testimony, the Committee invited the Board to propose ways of funding a records program. Discussions are continuing both with legislators and such interested parties as the [County Archivists and Records Management Association](#) (CARMA). Some ideas have emerged. A state subsidy in support of managing public records would be ideal but in the current fiscal environment that limits initiatives, this seems unrealistic to all.

Another model is in a neighboring state, Kentucky. There, records programs draw on fees imposed on some transactions of county and local governments. Such fees exist in the Ohio Revised Code but do not affect directly the managing of records. Adding a dollar or two on existing fees (see Ohio Revised Code 317.32) collected by County Recorders would create a new stream of revenue. Part of this money could go to managing records at the county offices, including records retention scheduling, microfilming and digitization. Some should also support records management at other public offices within the counties, including the municipalities, townships, and school districts. In fact, many of the complaints about access to public records are at the most local levels of government.

Public officials need expertise as well as money to support records scheduling and access. One idea is to strengthen the local government records program of the State Archives by adding representatives who would work with officials in counties and municipalities. With added support, the State Archives would provide training and coordination as well as expertise in such complex matters as evaluating digital record keeping systems. A portion of the revenue should go to helping the State Archives assure that access to public records is uniform in all of Ohio.

These concerns aside, the Board stands in favor of House Bill 9. It improves and upholds the rights of Ohioans to their records and to their documentary heritage. All archivists and concerned citizens in Ohio should contact state legislators and support House Bill 9. At the same time, they should think about ways of improving the bill and providing more financial support for public records. Members of the Ohio Historical Records Advisory Board invite and welcome comments and new ideas.

