I. Chapter One: Public Records Defined

The Public Records Act applies only to "public records," which the Act defines as "records kept by a public office."[2] When making or responding to a public records request, it is important to first establish whether the items sought are really "records," and if so, whether they are currently being "kept by" an organization that meets the definition of a "public office." This chapter will review the definitions of each of these key terms and how Ohio courts have applied them.

One of the ways that the Ohio General Assembly removes certain records from the operation of the Public Records Act is to simply remove them from the definition of "public record." Chapter Three addresses how exemptions to the Act are created and applied.

A. What Is a "Public Office"?

1. Statutory definition – R.C. 149.011(A)

"Public office" includes "any state agency, public institution, political subdivision, or other organized body, office, agency, institution, or entity established by the laws of this state for the exercise of any function of government."[3] But an organization that meets the statutory definition of a "public body" (see Open Meetings Act, Chapter One: A. "Public Body") does not automatically meet the definition of a "public office."[4]

This definition includes all state and local government offices, and also many agencies not directly operated by a political subdivision, such as police departments operated by private universities.[5] Examples of entities that previously have been determined to be "public offices" (prior to the *Oriana House*[6] decision) include:

- Some public hospitals;[7]
- Community action agencies;[8]
- Private non-profit water corporations supported by public money;[9]
- Private non-profit PASSPORT administrative agencies;[10]
- Private equity funds that receive public money and are essentially owned by a state agency;[11]
- Non-profit corporations that receive and solicit gifts for a public university and receive support from taxation;[12]
- Private non-profit county ombudsman offices;[13] and
- County emergency medical services organizations.[14]

2. Private entities can be "public offices"

If there is clear and convincing evidence that a private entity is the "functional equivalent" of a public office, that entity will be subject to the Public Records Act.[15] Under the functional-equivalency test, a court must analyze all pertinent factors, including: (1) whether the entity performs a governmental function; (2) the level of government funding; (3) the extent of government involvement or regulation; and (4) whether the entity was created by the government or to avoid the requirements of the Public Records Act.[16] The functional-equivalency test "is best suited to the overriding purpose of the Public Records Act, which is 'to allow public scrutiny of public offices, not of all entities that receive funds that at one time were controlled by the government.'"[17] In general, the more it can be shown that a private entity is performing a government function, as well as the extent to which the entity is funded, controlled, regulated, and/or created by the government, the more likely a court will determine that it is a "public institution," and therefore, a "public office" subject to the Public Records Act.