

## Client Alert: Private University Police Department Records Qualify as Public Records

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On May 21, 2015, the Supreme Court of Ohio ruled that police department records at Otterbein University, a private university in Ohio, are public records for purposes of Ohio's Public Records Act (See *The State ex rel. Schiffbauer v. Banaszak*, 2015-Ohio-1854). Private entities, even sub-parts of private universities, can qualify as public bodies with duties to comply with Ohio's Public Records Act.

Even though Otterbein is a private university, "[b]ecause its [police] officers are sworn, state-certified police officers who exercise plenary police power," the Court held "that the Otterbein police department is a public office."

Ohio law provides for public access to state and local governmental records. Under the Ohio Public Records Act at Ohio Revised Code §149.43, any person may request "public records" from any "public office." A public office must organize and maintain its public records in a manner that meets its duty to respond to public records requests, and must keep a copy of its records retention schedule at a location readily available to the public. When the public body receives a proper public records request, unless a portion or all of a public record is exempt from release as set forth expressly by the Ohio Public Records Act or other Ohio law, the public office must provide inspection of the requested records promptly and at no cost, or provide copies at cost within a reasonable period of time.

In this case, a news editor for a student-run media website sought certain Otterbein police department criminal reports. Otterbein rejected the request on the ground that the university is private such that its records were not "public records" of a "public office."

Though the university is private, its campus police department was established under Ohio statutory law (see Ohio Revised Code §1713.50), and its officers had the same authority as a police officer of a municipality or a county sheriff. Another option would have been to form a campus security department to patrol campus and "call local police...when appropriate" but not be made up of "sworn officers."

The Court found that Otterbein’s campus police department constituted an “organized body, office, agency, institution, or entity established by the laws of this state for the exercise of any function of government.” It exercised the functions that were “historically a government function.” Therefore, the campus police were subject to public records requests under the Ohio Public Records Act.

Prior Ohio case law made it clear that private bodies could be public entities under a functional equivalency test with a court analyzing multiple factors concerning whether the entity performed a governmental function, the level of government funding, the extent of government involvement or regulation, and whether the entity was created by the government or to avoid the requirement of the Public Records Act (See *State ex rel. Oriana House, Inc. v. Montgomery*, 110 Ohio St.3d 456, 2006-Ohio-4854). This new ruling expands consideration of “what is a functional public body” to subparts of private bodies that may separately constitute public bodies, even where the parent organization is a private institution.

For more information about the ruling and related Ohio “Sunshine Laws” – the Public Records Act and Open Meetings Act – please contact your Vorys lawyer or Rodney Holaday at [raholaday@vorys.com](mailto:raholaday@vorys.com) or 614.464.8356.