

Change to Police Department Offense Reports Make Supplements and Witness Statements Likely Public Records

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Categories:
Publications

In a decision issued June 9, the Ohio Supreme Court held that supplemental narratives (typically officers' factual impressions and witness statements) created close in time to the initial offense or incident report are public records.[1] What constitutes 'close in time' will have to be fleshed out in later cases, but same-day (and perhaps even the next day) narratives very likely will be considered public records. This decision is noteworthy because it changes the current practice of most Ohio police departments.

As Ohio Public Records Act practitioners and police departments know, initial offense reports are public records. The records are not exempt as confidential law enforcement investigatory record because they *initiate* an investigation (they are not part of one). These offense or incident reports are often fill-in-the-blank type forms. Any later supplemental narratives that were not incorporated into the offense report were not considered part of the initial offense report. In turn, the later supplemental narratives were not considered public records because they were law enforcement investigatory records (work product, as part of the ensuing investigation).

In short: offense reports were public records; narrative supplements and witness statements generally were not. However, this recent decision changes that practice. The Ohio Supreme Court ruled that:

- officers' reports containing observations at the time they responded to an incident; and
- initial witness statements taken at the time of the incident or "immediately thereafter" are both "incident report information."

Accordingly, those records are now public records (subject to standard redactions).

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The decision addressed a number of public record requests for offense report narratives. In each case, narrative statements created on, and witness statements collected on, the same day of the incident were all considered public records. One narrative supplement created eight months later was not.

In light of the significant change in public records practice resulting from this decision, we recommend that police departments in Ohio review their public records policy and practice, and update their public records custodians, to ensure that they comply with the most up-to-date interpretation of the Public Records Act.

If you have any questions about the impact of this decision, please contact any member of Frost Brown Todd's Government Services practice group.

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[1] *State ex rel. Myers v. Meyers,* 2022-Ohio-1915 (Ohio S. Ct. June 9, 2022).

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