

Ohio Secretary of State: Full explanation given regarding Freedom of Information Act vs Public Records Act (PRA) and the request must be more specific

Wednesday, November 26, 2008 12:06 PM
From: "Seskes, Brandi" <BSeskes@sos.state.oh.us>

I have received your email of November 25, 2008 in which you request the following:

1. *Documents that show that Barack Obama is qualified to be President of the United States, including but not limited to:*
 - a. *Original birth certificate*
 - b. *Proof that he is a natural born United States citizen*
 - c. *Proof that he was born in Kenya*

You assert in your email that your request is filed pursuant to the Freedom of Information Act ("FOIA"). In order to clear up any confusion, please understand that state agencies and officers are not subject to the FOIA, which is a federal law of limited scope. See, *e.g.*, 5 U.S.C. § 551(1), 5 U.S.C. 552(f), and *State ex rel. WBNS-TV, Inc. v. Dues*, 101 Ohio St. 3d 406, 412. Rather, state agencies and officers are governed by the public records' laws of the state in which they serve.

In Ohio, public records are governed by Ohio Revised Code §149.43, often referred to as the Public Records Act ("PRA"). The PRA does not require a response within any particular period of time. Instead, the PRA requires a public office to respond within a reasonable period of time, or, alternatively, to permit prompt in-person inspection of records.

Requestors under the PRA must be specific in the substance of their requests. Public offices in Ohio are under no obligation to provide information or to research its records to find any record containing selected information that is of interest to a requestor.

The PRA provides that a requestor has a duty to "identify the records * * * wanted with sufficient clarity." *State ex rel. Dillery v. Icsman (2001)*, 92 Ohio St.3d 312, 314. A request for public records " * * * must be specific and particularly describe what [records are] being sought." *State ex rel. Zauderer v. Joseph (1989)*, 62 Ohio App. 3d 752, 756. Requests that do not meet these requirements are generally considered overly broad or improper.

Your first request, for an original birth certificate for President-Elect Obama, is sufficiently precise to allow us to identify the record you seek. However, you have not identified a record that this office maintains. As such, we cannot provide it to you.

Your second and third requests are overbroad. You have not identified any record with particularity so that we may identify the record you seek. You have simply asked this office to search its records to identify any document that may contain the information you seek. This office is not obligated by law to do so.

Finally, to the extent that you have left your request as an open-ended request for any and all records that may contain the information you seek (" . . . including but not limited to . . ."), your request is overbroad and improper under Ohio law. Your request must identify with specificity and particularity the record(s) you seek.

If you can provide this office with a more specific request identifying the particular records you seek, we will be happy to advise whether we have such records in our custody, and if so, to provide a copy of those records to you.

If you have additional questions, please do not hesitate to contact our office.

Sincerely,
Brandi Laser Seskes
Elections Counsel, Office of Ohio Secretary of State Jennifer Brunne