

FOR THE SIMPLE MINDED LIKE ME

By: Jack Greiner on October 24, 2018 on graydon.law

I am simple minded by nature. It is a blessing - I don't tend to over think things - and a curse - I don't handle nuance well.

And my simple minded instincts really kicked into gear when reading [this story by Cincinnati Enquirer reporter Sherry Coolidge](#) about whether text messages circulated among Cincinnati City Council members are public records. My simple mind says yes. And a quick review of the Ohio Revised Code makes it pretty clear I think.

Here's the definition of a "record" in R.C. 149.43:

"[A]ny document, device, or item, regardless of physical form or characteristic, including an electronic record as defined in section [1306.01](#) of the Revised Code, created or received by or coming under the jurisdiction of any public office of the state or its political subdivisions, which serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office."

So let's think about this. The law clearly says that a "record" includes "an electronic record as defined in [R.C.] section 1306.01." I know my inquiring readers want to know what 1306.01 says. So here goes:

"Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means."

So, a text message is an "electronic record." Check one.

And given that in this case, the texts were drafted by Cincinnati City Council members, they were unquestionably "created . . . by [a] political subdivision" (i.e. the City of Cincinnati). Check two.

And given that the texts concern city business, they clearly "document the . . . activities of the office." Check three.

This is like baseball. If three pitches cross the plate in the strike zone and none are struck, it's a strikeout.

Weird how a simple minded person like me can figure this out, but our elected officials can't.