

OPINION NO. 2000-021**Syllabus:**

1. R.C. 149.43, as amended by Am. Sub. S.B. 78, 123rd Gen. A. (1999) (eff. Dec. 16, 1999), imposes no duty upon any particular individual or office to notify public offices of a peace officer's residential and familial information or to update the database.
2. For purposes of R.C. 149.43, a child of a peace officer includes a natural or adopted child, a stepchild, and a minor or adult child.
3. Under the definition in R.C. 149.43(A)(7), peace officer residential and familial information encompasses only records that both contain the information listed in the statute and disclose the relationship of the information to a peace officer or a spouse, former spouse, or child of the peace officer, and those are the only records that come within the statutory exception to mandatory disclosure provided by R.C. 149.43(A)(1)(p).
4. The exception for peace officer residential and familial information applies only to information contained in a record that presents a reasonable expectation of privacy, and does not extend to records kept by a county recorder or other public official for general public access. The general provisions of R.C. 149.43 excluding peace officer residential and familial information from mandatory disclosure do not operate to impose requirements or limitations on systems of public records that have been designed and established for general public access, where there is no reasonable basis for asserting a privacy interest and no expectation that the information will be identifiable as peace officer residential and familial information.
5. R.C. 149.43 provides no liability for disclosing information that comes within an exception to the definition of "public record." Liability may result, however, from disclosing a record that is made confidential by a provision of law other than R.C. 149.43.

To: Julia R. Bates, Lucas County Prosecuting Attorney, Toledo, Ohio
By: Betty D. Montgomery, Attorney General, April 18, 2000

We have received your request for an opinion concerning the implementation of Senate Bill 78, which excludes peace officer residential and familial information from Ohio's public records law, R.C. 149.43. *See* Am. Sub. S.B. 78, 123rd Gen. A. (1999) (eff. Dec. 16, 1999). You have asked the following questions:

1. Who has the duty to notify public offices of the peace officer's personal and familial information?
2. What liability, if any, would be with the public office for disclosing information which is within the purview of the peace officers' exception? Since the Bill contains neither penalty provisions nor a duty to notify, I am concerned that county offices could be accused of providing information which should remain protected.
3. Whose duty is it to update the database - the public office, the peace officers, or the other individuals protected by the legislation? For example, would the former spouse and children have the duty to notify and update, or would the peace officer have that burden? Although the child of a peace officer is protected, S.B. 78 does not define that term. Is a child a natural or adopted person under age eighteen or does it include stepchildren and adult children, as well?
4. How does a public office logistically redact or segregate peace officer/familial information and contemporaneously provide such information for commercial purposes, i.e., the filing and recording deeds, mortgages, mechanics liens and maintain compliance with its statutory duties?

In order to address your questions, we need to understand the operation of Ohio's public records law. R.C. 149.43(B)(1) provides generally that public records must be made available for inspection to any person at all reasonable times during business hours. R.C. 149.43(A)(1) defines "[p]ublic record" to mean "any record that is kept by any public office," with certain listed exceptions. See R.C. 149.011(G) (defining "[r]ecords"). Thus, the public records law requires the disclosure, upon request, of every record held by a public office, unless an exception applies. R.C. 149.43; see *State ex rel. The Miami Student v. Miami Univ.*, 79 Ohio St. 3d 168, 680 N.E.2d 956 (1997). An item that comes within one of the exceptions is not considered a public record and is not subject to the requirement that it be disclosed. See, e.g., 1996 Op. Att'y Gen. No. 96-005.

The Ohio Supreme Court has mandated that the public records law be liberally construed to benefit the public through access to records. *State ex rel. Cincinnati Post v. Schweikert*, 38 Ohio St. 3d 170, 527 N.E.2d 1230 (1988). Exceptions are strictly construed, with any doubt resolved in favor of disclosure. See, e.g., *State ex rel. Gannett Satellite Info. Network, Inc. v. Petro*, 80 Ohio St. 3d 261, 685 N.E.2d 1223 (1997); 1997 Op. Att'y Gen. No. 97-038; 1990 Op. Att'y Gen. No. 90-007. The exceptions that are relevant to your request are the exception for "[p]eace officer residential and familial information," which was added by Senate Bill 78, and the exception for "[r]ecords the release of which is prohibited by state or federal law." R.C. 149.43(A)(1)(p) and (r).¹

The term "[p]eace officer residential and familial information" is defined as follows:

(7) "Peace officer residential and familial information" means information that discloses any of the following:

¹In Senate Bill 78, the exception for records the release of which is prohibited by state or federal law is designated as subdivision (q) of R.C. 149.43(A)(1). Because of another statutory amendment, that exception is now designated as subdivision (r). R.C. 149.43(A)(1) (Anderson Supp. 1999).

(a) The address of the actual personal residence of a peace officer, except for the state or political subdivision in which the peace officer resides;

(b) Information compiled from referral to or participation in an employee assistance program;

(c) The social security number, the residential telephone number, any bank account, debit card, charge card, or credit card number, or the emergency telephone number of, or any medical information pertaining to, a peace officer;

(d) The name of any beneficiary of employment benefits, including, but not limited to, life insurance benefits, provided to a peace officer by the peace officer's employer;

(e) The identity and amount of any charitable or employment benefit deduction made by the peace officer's employer from the peace officer's compensation unless the amount of the deduction is required by state or federal law;

(f) The name, the residential address, the name of the employer, the address of the employer, the social security number, the residential telephone number, any bank account, debit card, charge card, or credit card number, or the emergency telephone number of the spouse, a former spouse, or any child of a peace officer.

As used in divisions (A)(7) and (B)(5) of this section, "peace officer" has the same meaning as in section 109.71 of the Revised Code,² except that "peace officer" does not include the sheriff of a county or a supervisory employee who, in the absence of the sheriff, is authorized to stand in for, exercise the authority of, and perform the duties of the sheriff.

R.C. 149.43(A)(7) (footnote added). Pursuant to R.C. 149.43(A)(1)(p), the information included within this definition is excluded from the definition of "[p]ublic record" and, therefore, is not required to be disclosed to the public under the public records law.

Information relating to peace officers may also be excluded from mandatory disclosure under the public records law pursuant to R.C. 149.43(A)(1)(r), which excludes records if their release is prohibited by state or federal law.³ In recent years, the courts have examined

²The definition of "peace officer" appearing in R.C. 109.71 is the definition that applies to certification by the Ohio Peace Officer Training Commission. R.C. 109.71; *see* R.C. 109.72-.77. It encompasses a wide variety of law enforcement officials, including police officers, undercover drug agents, wildlife officers, state university law enforcement officers, and investigators appointed by the Auditor of State. R.C. 109.71(A).

³*See, e.g.,* R.C. 149.43(B)(4) (language enacted by Senate Bill 78 provides that public records concerning criminal investigations or prosecutions, or investigations or prosecutions that would be criminal if the subject were an adult, need not be disclosed to persons who are incarcerated pursuant to a criminal conviction or a juvenile adjudication unless the information is subject to release as a public record and the judge finds that the information is necessary to support what appears to be a justiciable claim); R.C. 2921.24 (prohibiting an officer or employee of a law enforcement agency or court, or of the office of the clerk of court, from disclosing during the pendency of a criminal case the home address of a peace

this exception and have construed it to exclude information from mandatory disclosure if disclosure would violate a person's federal constitutional right to privacy. In *State ex rel. Beacon Journal Publishing Co. v. City of Akron*, 70 Ohio St. 3d 605, 640 N.E.2d 164 (1994), the Ohio Supreme Court found that social security numbers of employees were not public records because their disclosure would violate the federal constitutional right to privacy. The court held that R.C. 149.43 does not mandate that a city disclose the social security numbers of its employees upon demand. See 1996 Op. Att'y Gen. No. 96-034 (concluding that *State ex rel. Beacon Journal Publishing Co. v. City of Akron* does not impose upon a county recorder the obligation, prior to recording, to remove or obliterate social security numbers that appear on mortgages, mortgage releases, veterans discharges, or financing statements); see also 1999 Op. Att'y Gen. No. 99-006 (concluding that federal constitutional privacy interests require the redaction of social security numbers and AIDS-related information from run sheets of a county emergency medical services organization); 1997 Op. Att'y Gen. No. 97-010 (concluding that federal constitutional privacy interests prevent the mandatory disclosure of an AIDS diagnosis appearing in a workers' compensation claim file).

In *Kallstrom v. City of Columbus*, 136 F.3d 1055 (6th Cir. 1998), the United States Court of Appeals for the Sixth Circuit considered a situation in which the City of Columbus, acting pursuant to R.C. 149.43, disclosed to counsel defending members of a violent gang information contained in personnel and pre-employment files of an undercover officer who was actively involved in investigating a drug conspiracy and who testified at trial. Other plaintiff officers suspected that the copies of their personnel and pre-employment files were disclosed to the same defense attorney. The files included the officers' addresses and phone numbers; the names, addresses, and phone numbers of immediate family members; the names and addresses of personal references; the officers' banking institutions and account information; their social security numbers; responses to questions regarding their personal life asked during polygraph examinations; and copies of their driver's licenses, including pictures and home addresses.

The *Kallstrom* court found that the officers' privacy interest in the personal information contained in their personnel files implicated a fundamental liberty interest, "specifically their interest in preserving their lives and the lives of their family members, as well as preserving their personal security and bodily integrity." *Kallstrom v. City of Columbus*, 136 F. 3d at 1062. The court stated that "where the release of private information places an individual at substantial risk of serious bodily harm, possibly even death, from a perceived likely threat," the governmental act is subject to strict scrutiny and will be upheld under the substantive due process component of the Fourteenth Amendment only where it furthers a compelling state interest and is narrowly drawn to further that interest. *Id.* at 1064. Thus, the court found that the officers had a fundamental constitutional interest in preventing the disclosure of personal information contained in their personnel files where the disclosure created a substantial risk of serious bodily harm. Accordingly, the court balanced the interests of the officers against those of the city and found that, because the city did not establish that its actions narrowly served a compelling state interest, disclosure of the information unconstitutionally denied the officers their fundamental rights to privacy and personal security. The court stated also that procedural due process requires that the officers receive notice and an opportunity to be heard prior to the release of personal information "where

officer who is a witness or arresting officer in the case, and providing an exception if the officer discloses his or her own home address or if the court orders the disclosure for good cause); R.C. 2933.73(D) (prohibiting the disclosure of the identity of an officer who seized property that is ordered forfeited).

the disclosure of the requested information could potentially threaten the officers' and their families' personal security." *Id.* at 1069.

The Ohio Supreme Court adopted the *Kallstrom* reasoning in a case involving a request made by a defense attorney for copies of all personnel and internal affairs records relating to a sheriff's detective who was expected to appear as a witness against the defendant in a criminal trial. *State ex rel. Keller v. Cox*, 85 Ohio St. 3d 279, 707 N.E.2d 931 (1999). The court concluded that access to the records was properly denied, stating:

[B]ased on *Kallstrom v. Columbus* (C.A.6, 1998), 136 F.3d 1055, the requested records are exempt because they are protected by the constitutional right of privacy. Police officers' files that contain the names of the officers' children, spouses, parents, home addresses, telephone numbers, beneficiaries, medical information, and the like should not be available to a defendant who might use the information to achieve nefarious ends. This information should be protected not only by the constitutional right of privacy, but, also, we are persuaded that there must be a "good sense" rule when such information about a law enforcement officer is sought by a defendant in a criminal case. On the other hand, any records needed by a defendant in a criminal case that reflect on discipline, citizen complaints, or how an officer does her or his job can be obtained, if any exist, through internal affairs files in accordance with previous decisions of this court.

State ex. rel Keller v. Cox, 85 Ohio St. 3d at 282, 707 N.E.2d at 934. Thus, the court recognized an exemption from the public record disclosure requirements when personal information in police officers' files is requested by defendants in criminal proceedings and release would create a substantial risk of bodily harm.

At the current time, peace officer residential and familial information is excluded from mandatory disclosure under the public records law pursuant to the statutory exception enacted by Senate Bill 78. However, such information may also be subject to exclusion in certain circumstances on the grounds that its release is prohibited by federal law. The federal constitutional provisions not only exclude certain information from mandatory disclosure but also provide both a guarantee of due process that requires a hearing and a guarantee of confidentiality that prohibits disclosure. *See generally, e.g.*, 1999 Op. Att'y Gen. No. 99-006.

To fully address your concerns, it is necessary to consider which records are covered by the statutory exception for peace officer residential and familial information. *See* R.C. 149.43(A)(1)(p); R.C. 149.43(A)(7). The statute, as quoted above, states that peace officer residential and familial information means "information that discloses" any of a number of listed types of information. R.C. 149.43(A)(7). The statute does not define the type of public office that is subject to the peace officer exception or the type of file or other information source that is covered. It simply provides that the term "public record" does not include any of the information defined as peace officer residential and familial information. R.C. 149.43(A)(1)(p).

The language of the statute indicates that the definition of peace officer residential and familial information applies to information of the types listed when that information appears in the records of the peace officer's employer. *See* R.C. 149.43(A)(7)(d) (including as peace officer residential and familial information the name of a beneficiary of employment benefits provided to a peace officer by the peace officer's employer); R.C. 149.43(A)(7)(e)

(including as peace officer residential and familial information the identity and amount of a charitable or employment benefit deduction made by the peace officer's employer from the peace officer's compensation, unless the deduction is required by law); R.C. 149.43(B)(5) (requiring the disclosure, upon receipt of a request from a journalist, of certain information contained in the records of the agency employing a specified peace officer).

Your questions, however, contemplate that the definition also includes information contained in records held by the county auditor, recorder, probate court, and other governmental offices. The definition does not expressly exclude such records. Therefore, it appears to include records held by someone other than a peace officer's employer. A reasonable reading of the definition however, requires that it be restricted to records that disclose both the listed information and the fact that the information relates to a particular peace officer or relative, so that a public office is able to determine from the face of a record whether it comes within the definition. *See* 1.47(A) ("[i]n enacting a statute, it is presumed that ... [a] result feasible of execution is intended"). Thus, the disclosure of a record does not constitute disclosure of peace officer residential and familial information unless the record both contains information of the types listed in R.C. 149.43(A)(7) and presents the information in a manner that reveals its relationship to a peace officer or the spouse, former spouse, or child of a peace officer.

When the peace officer's employer holds listed information about the peace officer, the connection is clear: the information discloses facts relating to that peace officer, comes within the exception to the public records law, and is not subject to mandatory disclosure. However, if information appears in a record held by another public office and that record does not disclose the fact that the information relates to a peace officer, it does not come within the definition and is subject to mandatory disclosure. For example, it is possible to use the records of a county recorder to determine which parcels of real property are owned by a particular individual. *See* R.C. 317.08. That information, however, does not disclose whether the individual is a peace officer or a family member of a peace officer or whether a particular site is the individual's actual personal residence. Therefore, that is not the sort of information to which the peace officer exception applies.⁴

Following the issuance of the decision in *State ex rel. Beacon Journal Publishing Co. v. City of Akron*, which upheld the city's refusal to disclose employees' social security numbers, we issued an opinion addressing the question whether that case requires a county recorder to remove or obliterate social security numbers that appear on mortgages, mortgage releases, veterans discharges, and financing statements before recording those documents. The opinion, 1996 Op. Att'y Gen. No. 96-034, concludes that it does not. 1996 Op. Att'y Gen. No. 96-034 discusses *State ex rel. Beacon Journal Publishing Co. v. City of Akron* and finds that social security numbers are excluded from R.C. 149.43(A)(1)'s definition of "[p]ublic record" only in circumstances in which there is a reasonable basis for asserting a privacy interest in the numbers. The opinion concludes that no such interest exists with respect to numbers that are included in documents that are submitted for recording by the county recorder, because those records are designed and expected to be readily accessible to the general public. *Id.*; *see also State ex rel. Cincinnati Enquirer v. Hamilton County*, 75 Ohio St. 3d 374, 662 N.E.2d 334 (1996) (holding that audiotapes of 911 emergency calls are public records and are subject to mandatory disclosure even if they might reveal social

⁴As a practical matter, a peace officer who is concerned that the existence of his or her name in a public record would be a cause of endangerment might use a corporation, trust, or other arrangement to avoid having property recorded in his or her name.

security numbers); 1994 Op. Att'y Gen. No. 94-089 (finding that court records are public records for purposes of R.C. 149.43).

The same principles are applicable in the instant case. The peace officer residential and familial information exception applies to information found in a record that presents a reasonable expectation of privacy. In contrast, if a peace officer provides information in a document that is submitted to the county recorder for recording, that document is indistinguishable from a document submitted by anyone else. It is anticipated that the document will be available for examination by the public, and there is no expectation that the information will be private. Correspondingly, there is no expectation that the information will be designated as peace officer residential and familial information. Therefore, when such information is submitted to public officials, it is treated as information received from any other individual and is accessible in the same manner and to the same extent.

Let us turn now to your specific questions. Your first question is who has the duty to notify public offices of the peace officer's personal and familial information. Neither R.C. 149.43 nor Senate Bill 78 imposes upon anyone a duty either to provide public offices with peace officer personal and familial information or to notify public offices that information they hold is peace officer personal and familial information. The public records law applies to such public records as are kept by a public office. R.C. 149.43(A). It does not impose any duty of notification.

Let us skip now to your third question, which raises related issues: who has a duty to update the database - the public office, the peace officers, or other individuals protected by the legislation? You ask whether the former spouse and children have the duty to notify and update, or whether the peace officer has that burden. Again, the public records law does not mandate the submission or receipt of additional information. Whatever peace officer residential and familial information is in a record is protected from mandatory disclosure. Clearly, information that has not been provided cannot be disclosed. *See generally State ex rel. Fant v. Mengel*, 62 Ohio St. 3d 455, 584 N.E.2d 664 (1992). We conclude, therefore, that R.C. 149.43, as amended by Am. Sub. S.B. 78, 123rd Gen. A. (1999) (eff. Dec. 16, 1999), imposes no duty upon any particular individual or office to notify public offices of a peace officer's residential and familial information or to update the database.

You have asked also whether protection against mandatory disclosure of information relating to a child includes a natural or adopted person under age eighteen, and whether it includes stepchildren and adult children as well. No statutory definition is provided in R.C. 149.43. Therefore, pursuant to R.C. 1.59(A), "[c]hild" includes child by adoption."

With respect to the remainder of this question, words in a statute should be construed according to common usage. R.C. 1.42. Where there is ambiguity, it is appropriate to consider the object sought to be obtained and the consequences of a particular construction. R.C. 1.49. It is our judgment that, for purposes of the peace officer residential and familial information exception, it is appropriate to construe the term "child" to include any stepchild or adult child about whom information is provided. For example, if a peace officer's personnel file contains information relating to a stepchild or adult child, it is apparent that the stepchild or adult child is considered part of the peace officer's family and it is appropriate to treat that information like other familial information. The statute is not directed at making distinctions in degrees of relationship. Therefore, for purposes of R.C. 149.43, a child of a peace officer includes a natural or adopted child, a stepchild, and a minor or adult child.

For ease of discussion, let us consider your fourth question next. You have asked how a public office logistically redacts or segregates peace officer residential and familial information while contemporaneously providing such information for commercial purposes (*i.e.*, the filing and recording of deeds, mortgages, and mechanics liens) and maintaining compliance with its statutory duties. Your request states that “[t]he database of the county auditor, recorder, probate court, and, in fact, all governmental offices keeping such records will have to redact or segregate the pertinent information.”

It appears that your questions arise from a concern that a public office may have peace officer residential and familial information without being able to determine that the information fits within that category. If that is the case, the information will not come within the definition of peace officer residential and familial information appearing in R.C. 149.43. Especially in light of the fact that there is no duty to provide notification or updating of peace officer residential and familial information, it would not be feasible to include within the definition information a public office could not identify. *See* R.C. 1.47(D).

As discussed above, therefore, under the definition in R.C. 149.43(A)(7), peace officer residential and familial information encompasses only records that both contain the information listed in the statute and disclose the relationship of the information to a peace officer or a spouse, former spouse, or child of the peace officer, and those are the only records that come within the statutory exception to mandatory disclosure provided by R.C. 149.43(A)(1)(p). Further, the exception for peace officer residential and familial information applies only to information contained in a record that presents a reasonable expectation of privacy, and does not extend to records kept by a county recorder or other public official for general public access. The general provisions of R.C. 149.43 excluding peace officer residential and familial information from mandatory disclosure do not operate to impose requirements or limitations on systems of public records that have been designed and established for general public access, where there is no reasonable basis for asserting a privacy interest and no expectation that the information will be identifiable as peace officer residential and familial information.

This construction of the peace officer exception to the public records law is consistent with the general principle, discussed above, that exceptions to the law should be narrowly construed. *See, e.g., State ex rel. Gannett Satellite Info. Network, Inc. v. Petro.* It gives the peace officer exception a common sense reading that prevents the mandatory disclosure to the general public of information that presents a reasonable expectation of privacy, but does not require operational changes in other basic systems that provide public information. It is our judgment that the General Assembly sought to provide increased privacy for peace officers, but not to obliterate all references to their existence. There is no indication that the General Assembly intended to interfere with the application of the public records law to records kept by county auditors, recorders, or courts for general public access, and we decline to read the statute in a manner that would create such interference. Should the General Assembly wish to provide safeguards in addition to those recognized under this analysis, it may do so by enacting legislation that establishes such safeguards and defines their extent and the manner in which they are to be implemented.

As discussed above, information relating to peace officers is protected by the United States Constitution from disclosure in certain circumstances. Under existing case law, that protection has been extended to personal information in personnel files held by employers of peace officers, but it has not been extended generally to deeds, mortgages, or mechanics liens. *See, e.g., Kallstrom v. City of Columbus; State ex rel. Keller v. Cox. See generally State ex rel. Beacon Journal Publ'g Co. v. Bodiker*, No. 98AP-827, 1999 Ohio App. LEXIS 3191, at

*28-31 (Ct. App. Franklin County July 8, 1999) (discussing extent of constitutional privacy exception to public records law). It has been extended to personal identifying information about a peace officer, but not to information that is of public interest because it is relevant to the officer's job performance. *See State ex rel. Keller v. Cox; Smith v. City of Dayton*, 68 F. Supp. 2d 911, 918 (S.D. Ohio 1999) (in release of a portion of police officer's personnel file, finding a violation of constitutional right to privacy resulting from release of personal identifying information "of the sort likely to facilitate intrusion on the liberty/security interests of officers," but not from release of diagnosis of post-traumatic stress disorder, because release of diagnosis does not increase security risk to officer or officer's family, and there may be public interest in disclosure if the condition may affect job performance or risk to the public).

Further, constitutional protection of personal information has been provided only when there is a definite threat to safety. *See, e.g., Kallstrom v. City of Columbus; State ex rel. Beacon Journal Publ'g Co. v. Bodiker; Paulette v. Tablack*, No. 98 C.A. 196, 1999 Ohio App. LEXIS 1083, at *5 (Ct. App. Mahoning County Mar. 17, 1999) "[a] specific danger should be enumerated" before disclosure is denied). *But cf. Smith v. City of Dayton*, 68 F. Supp. 2d at 918-19 (finding a violation of constitutional rights in the release of personal identifying information even when there was no specific danger or definite threat to safety, but finding no evidence to support a grant of damages under 42 U.S.C. § 1983). Due process requires notice and an opportunity for a hearing prior to the disclosure of information that may be protected by the right to privacy, so that a subject has the opportunity to assert a privacy right. *See Kallstrom v. City of Columbus*. Thus, the interpretation of Senate Bill 78 adopted in this opinion protects from mandatory disclosure the personnel information that has been found to be protected by the federal right to privacy.

Let us conclude this opinion with consideration of your second question, which asks what liability a public office might bear for disclosing information that is within the purview of the peace officers' exception. As you note, Senate Bill 78 contains neither penalty provisions nor a duty to notify. You are concerned that county offices could be accused of providing information that should remain protected.

As discussed above, R.C. 149.43 was intended to provide for the disclosure of public records. It provides for a mandamus action if records are not promptly prepared and made available for inspection or copies are not supplied in a reasonable period of time, and it also provides for the award of "reasonable attorney's fees to the person that instituted the mandamus action." R.C. 149.43(C); *see also State ex rel. Board of Educ. v. City of Youngstown*, 84 Ohio St. 3d 51, 701 N.E.2d 986 (1998). However, the statute does not address the consequences of disclosing a document that comes within an exception to the definition of public record. This is consistent with the fact that R.C. 149.43 does not expressly prohibit the disclosure of items that are excluded from the definition of public record, but merely provides that their disclosure is not mandated.

The public records law excepts from its coverage various items for which confidentiality is granted or disclosure is prohibited by sources other than R.C. 149.43. *See, e.g., R.C. 149.43(A)(1)(i)* ("public record" does not include "[r]ecords containing information that is confidential under [R.C. 2317.023 or R.C. 4112.05]"); *R.C. 149.43(A)(1)(r)* ("public record" does not include records "the release of which is prohibited by state or federal law"). Thus, the consequences of improper disclosure issue from those other sources as well. *See R.C. 2921.24(D)* (disclosure of certain confidential information relating to peace officers is misdemeanor of the fourth degree); 1990 Op. Att'y Gen. No. 90-007, at 2-30 ("[u]nder both the

common law and the public records statutes, confidentiality of information kept by a public office is a matter of specific statute”).

In the instant case, if the disclosure of peace officer residential and familial information violates a specific statute, a criminal penalty may be imposed. *See* R.C. 102.03(B); R.C. 2921.24. Further, liability may result if there is a violation of due process rights or the federal right to privacy. *See Kallstrom v. City of Columbus* (action under 42 U.S.C. §§ 1983 and 1988 against city for violation of right to privacy as guaranteed by the Due Process Clause of the Fourteenth Amendment, claims of violations under R.C. 2921.24 and R.C. 102.03(B), and request for injunction). Other types of actions might also be brought. *See, e.g.,* R.C. 1347.10 (civil liability for causing harm by disclosing personal information in a personal information system in a manner prohibited by law); R.C. 1347.05(G) and R.C. 1347.99 (public official, employee, or other person who maintains personal information system may be guilty of minor misdemeanor for purposely refusing to take reasonable precautions to protect personal information from unauthorized disclosure). Questions of liability are resolved by the courts and cannot be determined by means of an opinion of the Attorney General.

We conclude accordingly, that R.C. 149.43 provides no liability for disclosing information that comes within an exception to the definition of “public record.” Liability may result, however, from disclosing a record that is made confidential by a provision of law other than R.C. 149.43.

Therefore, it is my opinion and you are advised, as follows:

1. R.C. 149.43, as amended by Am. Sub. S.B. 78, 123rd Gen. A. (1999) (eff. Dec. 16, 1999), imposes no duty upon any particular individual or office to notify public offices of a peace officer’s residential and familial information or to update the database.
2. For purposes of R.C. 149.43, a child of a peace officer includes a natural or adopted child, a stepchild, and a minor or adult child.
3. Under the definition in R.C. 149.43(A)(7), peace officer residential and familial information encompasses only records that both contain the information listed in the statute and disclose the relationship of the information to a peace officer or a spouse, former spouse, or child of the peace officer, and those are the only records that come within the statutory exception to mandatory disclosure provided by R.C. 149.43(A)(1)(p).
4. The exception for peace officer residential and familial information applies only to information contained in a record that presents a reasonable expectation of privacy, and does not extend to records kept by a county recorder or other public official for general public access. The general provisions of R.C. 149.43 excluding peace officer residential and familial information from mandatory disclosure do not operate to impose requirements or limitations on systems of public records that have been designed and established for general public access, where there is no reasonable basis for asserting a privacy interest and no expectation that the information will be identifiable as peace officer residential and familial information.

5. R.C. 149.43 provides no liability for disclosing information that comes within an exception to the definition of "public record." Liability may result, however, from disclosing a record that is made confidential by a provision of law other than R.C. 149.43.