

**OPINION NO. 93-032****Syllabus:**

A county department of human services fraud unit qualifies as a "criminal justice agency" under 12 Ohio Admin. Code 4501:2-10-01(I) and 28 C.F.R. §20.3(c) (1992), making it eligible to receive information made available through the Law Enforcement Automated Data System (LEADS), including information obtained from the National Crime Information Center (NCIC), if the fraud unit allocates fifty percent or more of its annual budget to the detection of persons who may have committed criminal offenses, including such offenses as criminal fraud, falsification, or theft.

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**To: P. Randall Knece, Pickaway County Prosecuting Attorney, Circleville, Ohio**

**By: Lee Fisher, Attorney General, November 16, 1993**

You have requested an opinion concerning the receipt of information from the Law Enforcement Automated Data System (LEADS), which provides access to the National Crime Information Center (NCIC). Your specific question is whether an investigator within the fraud unit of the Pickaway County Department of Human Services has a legal right to receive information from LEADS or NCIC. Your letter asserts that "it is virtually impossible for the investigator from the [f]raud [u]nit of the Pickaway County Department of Human Services to conduct a thorough investigation into welfare fraud matters without access to the information contained in the LEADS and NCIC computer files." Included with your letter is correspondence from the Pickaway County Department of Human Services noting that more than one million dollars in tax money was saved by the arrest of persons who fraudulently obtained benefits in Pickaway County. The letter specifically notes that many of the arrests were made possible by the receipt of information from LEADS and NCIC.

**Law Enforcement Automated Data System (LEADS)**

LEADS is a computerized network operated by the State of Ohio<sup>1</sup> that serves the State

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<sup>1</sup> LEADS was established under various federal grants. LEADS Operating Manual §1.1; *see also* 1989-1990 Ohio Laws, Part I, 1699, 1816 (Am. Sub. S.B. 336, eff. Apr. 10, 1990) (§16.04 of this Act provides that, "[e]ffective July 1, 1990, the Department of Highway Safety [now the Department of Public Safety], Division of Highway Patrol, is hereby designated as the administering state agency in all matters pertaining to the Law Enforcement Automated Data System"). *See generally* R.C. 107.18(B) (Governor may act for the state in taking acts necessary to qualify the state to receive federal funds for the state's participation in a federal program); R.C. 181.51(B)(1) ("criminal justice system" includes the state highway patrol); R.C. 181.52(B)(9) (state office of criminal justice services shall apply for, allocate, disburse, and account for grants made available pursuant to federal criminal justice acts, or made available from other federal sources to improve the criminal and juvenile justice systems in the state).

Highway Patrol, local police departments, sheriff's offices, and other criminal justice agencies throughout the state. R.C. 5503.10; Ohio State Highway Patrol, LEADS Operating Manual (1991) §1.2. The LEADS system compiles information concerning "wanted" motor vehicles registered in Ohio, towed vehicles, wanted, missing and unidentified persons, motor vehicle operator's license information, motor vehicle registration files, weather condition reports, fatal accident information, highway use tax permit files and criminal histories on individuals. LEADS Operating Manual §1.2.1. LEADS provides law enforcement officials with information collected by the Ohio Bureau of Motor Vehicles, the Ohio Department of Taxation, and the Bureau of Criminal Identification and Investigation (BCI & I). *Id.* LEADS is the primary link between NCIC and various regional, state, and local computer systems. *See* LEADS Operating Manual §§1.2 and 1.3. LEADS also provides a link to the National Law Enforcement Telecommunications System (NLETS), which permits inquiries to be made of other individual state systems. LEADS Operating Manual §12.1. LEADS also may be used to obtain from NLETS information collected by both the Federal Aviation Administration (FAA) and the United States Customs Service. *Id.* LEADS thus serves primarily as a communication network for other data bases.

#### National Crime Information Center (NCIC)

NCIC, a computerized information system operated by the Federal Bureau of Investigation (FBI), 28 C.F.R. §20.31(a) (1992), provides criminal history record information to, among others, state and local criminal justice agencies for criminal justice purposes. *See* 28 C.F.R. §20.30 (1992); 28 C.F.R. §20.33(a) (1992). Information in the system includes the Computerized Criminal History (CCH) File, a cooperative federal-state program for the interstate exchange of criminal history record information. *Id.* Criminal history record information includes information on serious and significant adult and juvenile offenses committed by adult offenders. 28 C.F.R. §20.32 (as amended in 57 Fed. Reg. 31,318 (1992)). NCIC also contains information concerning stolen vehicles, stolen or missing license plates, and wanted, missing, and unidentified persons. LEADS Operating Manual §9.1. Dissemination of the foregoing information beyond the receiving departments or related agencies is generally prohibited. *See* 28 C.F.R. §20.33(b) (1992).

#### Access to NCIC

Because NCIC is a collection of information in its own right, while LEADS primarily is a computerized communications network, access to NCIC will be considered first. Information from NCIC is available to criminal justice agencies for criminal justice purposes. 28 C.F.R. §20.33(a) (1992).<sup>2</sup> The receipt of criminal history information from NCIC may be terminated if the information is made available to an agency outside of the receiving criminal justice agency. 28 C.F.R. §20.33(b) (1992).

For purposes of 28 C.F.R. §20.33 (1992), "criminal justice agency" means only courts and government agencies or their subunits which perform the *administration of criminal justice* pursuant to statutory authority or as directed by an executive order and which allocate a substantial part of their annual budget to the *administration of criminal justice*. 28 C.F.R. §20.3(c) (1992). Pursuant to 28 C.F.R. §20.3(d) (1992), the term "administration of criminal justice" means the "performance of any of the following activities: *Detection*, apprehension,

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<sup>2</sup> Access to National Crime Information Center (NCIC) information also is regulated by policies and procedures recommended by the NCIC Advisory Policy Board and adopted by the Director of the FBI. 28 C.F.R. §20.35 (1992). Among the policies and procedures mandated are standards for participation by criminal justice agencies in the NCIC system. 28 C.F.R. §20.35(e) (1992). The standards require that a participating agency qualify as a "criminal justice agency" under 28 C.F.R. §20.3 (1992). FBI, NCIC Operating Manual (1984).

detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders." *Id.* (emphasis added). Subunits of a government agency may include a subunit whose principal function is the collection of evidence for criminal prosecutions of fraud. *See* 28 C.F.R. pt. 20 app. Subpart A (1992). Thus, a subunit of a government agency that, pursuant to statutory authority, detects persons who may be accused of, or who may have committed, criminal offenses such as fraud, and allocates a substantial part of its annual budget to the detection of such persons, is eligible to receive information from NCIC.

#### Access to LEADS

The Superintendent of the State Highway Patrol "shall adopt rules under Chapter 119. of the Revised Code establishing fees and guidelines for the operation of and participation in the LEADS program. These administrative rules shall include criteria for granting and restricting access to information maintained in LEADS". R.C. 5503.10. Because these rules are promulgated pursuant to a specific grant of legislative authority, they are to be given the force and effect of law. *Doyle v. Ohio Bur. of Motor Vehicles*, 51 Ohio St. 3d 46, 554 N.E.2d 97 (1990).

Pursuant to R.C. 5503.10 and the recommendation of the LEADS steering committee,<sup>3</sup> the Superintendent of the State Highway Patrol has promulgated rules specifying those agencies that may have access to LEADS. 12 Ohio Admin. Code 4501:2-10-03(A), the rule that describes the entities that may have access to LEADS, states, in relevant part: "Participation in the LEADS and the assignment of an originating agency identifier requires application and documentation that the requester is: (1) A criminal justice agency." A "criminal justice agency" is defined by 12 Ohio Admin. Code 4501:2-10-01(I) as follows: "'Criminal justice agency' means: (1) Courts; and (2) A governmental agency or any subunit thereof which performs the administration of criminal justice pursuant to a statute or executive order and which allocates a substantial part (fifty per cent or more) of its annual budget to the administration of criminal justice." (Emphasis added.) Rule 4501:2-10-01(D), in turn, defines "administration of criminal justice" as "the performance of any of the following activities: *detection*, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. The administration of criminal justice shall include criminal identification activities and the collection, storage, and dissemination of criminal history record information." (Emphasis added.) Accordingly, a subunit of a government agency that, pursuant to statute, detects persons who may be accused of, or who may have committed, criminal offenses, and allocates a substantial part (fifty percent or more) of its annual budget to the detection of such persons, is eligible to receive information from LEADS.

#### A County Department of Human Services Fraud Unit May Receive Information from LEADS or NCIC

Based upon the foregoing, a county department of human services fraud unit, as a subunit of a government agency,<sup>4</sup> may receive information from LEADS and NCIC if the fraud unit is

<sup>3</sup> The Superintendent of the State Highway Patrol is required to establish a "LEADS Steering Committee" "comprised of persons who are representative of the criminal justice agencies in Ohio that use the system." R.C. 5503.10; *see also* 12 Ohio Admin. Code 4501:2-10-02. The primary role of the Committee is to provide "recommendations for rules." Rule 4501:2-10-02.

<sup>4</sup> A county department of human services is a governmental agency. *See* R.C. 329.01 ("[i]n each county there shall be a county department of human services which, when so established shall be governed by sections 329.01 to 329.10 of the Revised Code"); R.C. 329.04 ("[t]he

statutorily authorized to detect criminal offenders and if the fraud unit allocates a substantial part (fifty percent or more) of its annual budget to the detection of persons who may have committed criminal offenses. Pursuant to R.C. 5107.04 and R.C. 5113.07, a county department of human services is required to take action to recover general assistance payments or payments of aid made as a result of misrepresentation or fraud. *Accord* 15 Ohio Admin. Code 5101:1-27-02(A). In discharging its duty to investigate cases of fraudulent receipt of public assistance or payments of aid under R.C. 5107.04 and R.C. 5113.07, a county department of human services shall employ those individuals "necessary for the efficient performance of the human services of the county." R.C. 329.01; *see also* 15 Ohio Admin. Code 5101:1-27-09(B) (a county department of human services "shall designate certain employees to have responsibility for fraud investigation"). Although the specific duties of a fraud investigator for the county department of human services fraud unit are not set forth in the Revised Code, 15 Ohio Admin. Code 5101:1-27-08 provides that such fraud unit's investigators<sup>5</sup> are responsible for handling fraud investigations that are beyond the scope of usual eligibility determinations, and any other duties needed by the department to further an investigation. Consistent with R.C. 5107.04 and R.C. 5113.07, therefore, a fraud unit of a county department of human services is authorized to detect those individuals who receive a general assistance payment or payment of aid through misrepresentation or fraud. *See generally* 1971 Op. Att'y Gen. No. 71-059 (the duty to initiate prosecution of individuals who have obtained food stamps through misrepresentations lies with the county department of human services, which should provide the county prosecutor with the information necessary to institute prosecution). Because a payment of general assistance or payment of aid made as a result of misrepresentation or fraud constitutes the criminal offense of theft, *see* R.C. 2913.02, or falsification, *see* R.C. 2921.13, a county department of human services fraud unit is statutorily authorized, pursuant to R.C. 5107.04 and R.C. 5113.07, to detect criminal offenders.

Whether a county department of human services fraud unit allocates a substantial part (fifty percent or more) of its annual budget to the detection of persons who may have committed criminal offenses such as criminal fraud, falsification, or theft, however, is a question of fact. Factual determinations are not properly made by the Attorney General. 1988 Op. Att'y Gen. No. 88-008 at 2-27; 1983 Op. Att'y Gen. No. 83-057 at 2-232. Accordingly, if a county department of human services fraud unit allocates a substantial part (fifty percent or more) of its annual budget to the detection of such persons, the fraud unit is a "criminal justice agency," as defined by rule 4501:2-10-01(I) and 28 C.F.R. §20.3(c) (1992).

### Conclusion

Based upon the foregoing, it is my opinion, and you are hereby advised that a county department of human services fraud unit qualifies as a "criminal justice agency" under 12 Ohio Admin. Code 4501:2-10-01(I) and 28 C.F.R. §20.3(c) (1992), making it eligible to receive information made available through the Law Enforcement Automated Data System (LEADS), including information obtained from the National Crime Information Center (NCIC), if the fraud unit allocates fifty percent or more of its annual budget to the detection of persons who may have committed criminal offenses, including such offenses as criminal fraud, falsification, or theft.

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county department of human services shall have exercise, and perform, *under the control and direction* of the board of county commissioners, the following powers and duties:..." (emphasis added)); *see also* 1983 Op. Att'y Gen. No. 83-071 at 2-291.

<sup>5</sup> 15 Ohio Admin. Code 5101:1-27-08 sets forth the powers and duties of the county department of human services overpayment recovery unit. The overpayment recovery unit "is a person or section whose duties involve determination and recovery of overpayments and fraud-related activity." 15 Ohio Admin. Code 5101:1-27-07(A). The fraud investigators of a county department of human services come within the definition of overpayment recovery unit set forth in rule 5101:1-27-07(A).