November 29, 1994

OPINION NO. 94-084

Arnold R. Tompkins, Director
Department of Human Services
30 East Broad Street
Columbus, Ohio 43266-0423

Dear Director Tompkins:

You have requested an opinion concerning whether a county department of human services may release to a law enforcement agency that has authority to apprehend an individual under an outstanding felony warrant the address of a recipient of aid to dependent children, general assistance, or disability assistance, if the social security number of that person is found to match the number of a person listed by the law enforcement agency as having an outstanding felony warrant. This question arises because a county sheriff recently provided a county department of human services with a list of names and social security numbers of persons under felony warrants and asked that agency to provide addresses of any individuals on the warrant list who were also receiving public assistance benefits. Your letter indicates a concern that the provisions of your department's own administrative rule — [1993-1994 Monthly Record] Ohio Admin. Code 5101:1-1-03 at 1479 — with respect to such releases of information may conflict with provisions of state or federal law governing those public assistance programs or the use of social security numbers.

General Description of Aid to Dependent Children, General Assistance, and Disability Assistance

Aid to dependent children (ADC) is a federal public assistance program established by Title IV-A of the Social Security Act of 1935, 49 Stat. 620 (codified as amended at 42 U.S.C. §§ 601 to 617 (1988 & Supp. IV 1992)).[1] The purpose of ADC is to provide "financial assistance and

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[1] The provisions of R.C. Chapter 5107 refer to this federal program as "aid to dependent children." *See, e.g.*, R.C. 5107.01 ("[t]he department of human services shall administer aid to dependent children under this chapter in accordance with Title IV-A of the _Social Security Act_"). The provisions of Title IV-A, however, have been amended to refer to the program as "aid to families with dependent children." *See* Public Welfare Amendments Act of 1962, § 104(a)(3), Pub. L. No. 87-543, 76 Stat. 172, 185 (codified as amended at 42 U.S.C. § 602 and other specified

rehabilitation and other services" that will enable dependent children to be cared for by their own families. 42 U.S.C. § 601 (1988). The ADC program in Ohio is administered by the state Department of Human Services and the county departments of human services. *See* R.C. 5107.01 ("[t]he department of human services shall administer aid to dependent children under this chapter in accordance with Title IV-A of the _Social Security Act_"); R.C. 329.04(A) (county department of human services accorded the power and duty "[t]o be the _county administration_ for all purposes of Chapter 5107. of the Revised Code").

Disability assistance (DA) is a state program of financial and medical assistance that is available to qualified disabled individuals who are not eligible for ADC, under R.C. Chapter 5107, or supplemental security income, under 42 U.S.C. § 1383 (1988 & Supp. IV 1992). *See* R.C. 5115.01. General assistance (GA) is a state program of financial and medical assistance that is available to qualified individuals who are not eligible for ADC or DA. *See* R.C. 5113.02; R.C. 5113.06; R.C. 5113.07(A)(1). Like ADC, GA and DA are administered by the Department of Human Services and the county departments of human services. *See* R.C. 5113.04-.05 (GA); R.C. 5115.02 (DA). Unlike ADC, the GA and DA programs are established entirely by state law. *See* [1993-1994 Ohio Monthly Record] Ohio Admin. Code 5101:1-5-01(E) at 1304 ("[s]ince GA and DA are state and county funded programs, no federal regulations govern the administration of these programs. The legal basis for the administration of these programs is the Ohio Revised Code and the Ohio Administrative Code").

Rule 5101:1-1-03: Restrictions on Release of Public Assistance Records Generally

Rule 5101:1-1-03 is a general rule promulgated and adopted by the Department of Human Services that governs the release of information and records concerning applicants and current or former recipients of public assistance through programs administered by the state and county departments of human services. Such public assistance programs include ADC, GA, and DA. The initial provisions of rule 5101:1-1-03 establish restrictions on the release of information from the records of public assistance programs in order to protect the right of privacy of individuals who are the subjects of that information. Paragraphs (A) and (B) of rule 5101:1-1-03 state, in pertinent part:

> (A) The "right of privacy" means that the individual controls the information held by the Ohio department of human services (ODHS) or county departments of human services (CDHS). All uses of personal information should be examined with reference to this concept.
> (B) All information and records concerning an applicant, recipient, or former recipient are to be safeguarded. No information is to be released to anyone (except

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sections (1988 & Supp. IV 1992)). As a result, federal materials dealing with this program use the acronym AFDC, *see, e.g.*, 45 C.F.R. § 233.20 (1993); *Greater Cleveland Welfare Rights Org. v. Bauer*, 462 F. Supp. 1313 (N.D. Ohio 1978), while Ohio materials tend to use the acronym ADC, *see, e.g.*, 15 Ohio Admin. Code Chapter 5101:1-3; *State v. Hughes*, 2 Ohio App. 3d 443, 442 N.E.2d 786 (Cuyahoga County 1981). This opinion will use the acronym ADC.

> the applicant, recipient, or former recipient) outside the agency unless the request clearly meets the three requirements below:
> (1) No employee or representative of the ODHS or CDHS may disclose any information concerning an applicant, recipient, or former recipient without the client's expressed consent ...; and
> (2) The information can only be released to agencies or representatives of agencies for purposes directly connected with the administration of the public assistance program. Such purposes include establishing eligibility, determining amount of assistance, and providing services for applicants and recipients; and
> (3) The information can only be released to agencies or representatives of agencies who are subject to standards of confidentiality and safeguarding information which are substantially comparable to those established in this rule.

Rule 5101:1-1-03(C)(5): Fugitive Felon Provision

Rule 5101:1-1-03(C) lists thirteen specific exceptions to the above requirements. Your specific concern is the portion of rule 5101:1-1-03(C) that states:

> With the following exceptions, no information regarding an applicant, recipient, or former recipient shall be disclosed unless the requirements of paragraph (B) of this rule are met. The exceptions are:
> ....
> (5) Law enforcement agencies prosecuting fraud, seeking child support, *requesting the current address of a fugitive felon.* Law enforcement agencies must furnish the name and social security number of the fugitive felon and must demonstrate that he is fugitive felon, that the location or apprehension of such felon is within the officer's official duties, and that the request is made in the proper exercise of those duties. A "fugitive felon" is defined as a person charged with a felony who has departed from his usual abode. (Emphasis added.)

Your question involves the disclosure of addresses of persons subject to outstanding felony warrants. A felony warrant is a directive to law enforcement agencies to arrest a suspect and to bring that individual before the court issuing the warrant for purposes of answering a felony charge and initiating the criminal justice process with respect to that charge. *See generally* R.C. 2935.08; R.C. 2935.10; R.C. 2935.13; Crim. R. 4. A person subject to an outstanding felony warrant, therefore, is a person charged with a felony whom a law enforcement agency has not yet arrested. Such an individual is a "fugitive felon," as defined in rule 5101:1-1-03(C)(5), if he or she has departed from his usual abode. Since rule 5101:1-1-03 governs public assistance programs generally, paragraph (C)(5), on its face, permits the disclosure to a law enforcement agency of the address of a fugitive felon who is a recipient of ADC, GA, or DA, provided that the law enforcement agency has complied with the conditions set out in (C)(5). You question, however, whether applicable state and federal laws prohibit the type of disclosure that is explicitly authorized in rule

5101:1-1-03(C)(5).[2]

Validity of Rule 5101:1-1-03(C)(5) Must Be Determined by Reference to Statutes Governing ADC, GA, and DA Respectively

An examination of the validity of rule 5101:1-1-03(C)(5) must begin with the principle that an administrative rule adopted pursuant to statutory authority has the force of law in Ohio, unless the rule is unreasonable or in clear conflict with statutes governing the same subject matter. *State ex rel. DeBoe v. Industrial Comm'n*, 161 Ohio St. 67, 117 N.E.2d 925 (1954) (syllabus, paragraph one); *accord Ohio Council 8, AFSCME v. City of Cincinnati*, 69 Ohio St. 3d 677, 680, 635 N.E.2d 361, 363 (1994); *State ex rel. Kildow v. Industrial Comm'n*, 128 Ohio St. 573, 580, 192 N.E. 873, 876 (1934). A properly promulgated administrative rule is entitled to a presumption of validity. In addition, the courts will give deference to any reasonable administrative construction of the statutes that govern the agency's own duties and responsibilities. An Ohio appellate court, in the course of reviewing another rule of the Department of Human Services governing ADC, explained the deference due the rule as follows:

> we must give effect to the language as intended by Congress and the Ohio legislature, as that intention is implemented by and through the respective agency.... Likewise, if the statute is ambiguous, the agency's interpretation of the statute is also given due deference.... This is because the agency, in exercising the day-to-day responsibility of implementing the intention of Congress, has acquired "substantial expertise."

Lopez v. Ohio Dep't of Human Services, 88 Ohio App. 3d 231, 233-34, 623 N.E.2d 689, 691 (Defiance County 1993) (citing *Sullivan v. Everhart*, 494 U.S. 83 (1990) and *Jones Metal Products Co. v. Walker*, 29 Ohio St. 2d 173, 281 N.E.2d 1 (1972)), *motion to certify the record overruled*, 67 Ohio St. 3d 1513, 622 N.E.2d 659 (1993); *see also Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 843-44 (1984) (unless the language of a statute directly addresses the precise question at issue, the Court must defer to any reasonable construction of the statutory language rendered by the agency authorized to enforce and administer the statute);

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[2] The conclusions in 1983 Op. Att'y Gen. No. 83-071 do not resolve this question. The first syllabus paragraph of Op. No. 83-071 stated that rule 5101:1-1-03 prohibited the disclosure of information about ADC or poor relief recipients to law enforcement personnel, unless the law enforcement personnel were prosecuting public fraud or seeking child support. However, the analysis of Op. No. 83-071 was limited to a consideration of rule 5101:1-1-03 as it existed at that time, and did not include consideration of whether the Department of Human Services had authority to permit any additional disclosures. At that time, rule 5101:1-1-03 did not contain a provision that addressed fugitive felons. *See* Op. No. 83-071 at 2-292 through 2-293; *see also* [1984-1985 Monthly Record] Ohio Admin. Code 5101:1-1-03(B)(4) at 405 (first promulgation of a provision permitting disclosure with respect to fugitive felons). Additionally, federal ADC law did not contain a fugitive felon exception until 1984. *See* Deficit Reduction Act of 1984, Pub. L. 98-369, §2636, 98 Stat. 494, 1142-43 (1984) (codified at 42 U.S.C. § 602(a)(9)).

Industrial Comm'n v. Brown, 92 Ohio St. 309, 311, 110 N.E. 744, 745 (1915) ("[a]dministrative interpretation of a given law, while not conclusive, is, if long continued, to be reckoned with most seriously and is not to be disregarded and set aside unless judicial construction makes it imperative to do so"). Thus, your question requires an examination of relevant statutory law to determine the source and scope of the authority of the Department of Human Services to adopt rule 5101:1-1-03, which governs the disclosure of information regarding ADC, GA, and DA recipients.[3]

The Department of Human Services operates ADC, GA, and DA under separate statutory schemes. It therefore follows that although the fugitive felon provision of rule 5101:1-1-03(C)(5) is part of a rule applicable to public assistance programs generally, the validity of that provision with respect to ADC, GA, and DA must be determined by examining the specific statutes governing each of those programs.

Statutes Governing Disclosure of Information Regarding Recipients of ADC, GA, and DA

The responsibilities and authority of the Department of Human Services with respect to release of information concerning the ADC program are set forth in R.C. 5107.02(C), which states:

> *The department may adopt reasonable rules governing the custody, use, and preservation of the records, papers, files, and communications* of the department, *the county administration for aid to dependent children*, and all other state and county officials participating in the administration of this chapter. *Wherever names and*

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[3] It should be noted initially that Ohio public records law, R.C. 149.43 and related sections, provides a broad right of public access to records held by public offices, including county departments of human services. *See* 1990 Op. Att'y Gen. No. 90-007 at 2-27. Information that is a public record is accessible to "any person," including law enforcement agencies. R.C. 149.43(A); R.C. 1.59(C) (defining "person"). *See, e.g., Franklin County Sheriff's Dept. v. State Employment Relations Bd.*, No. 89AP-792 (Ct. App. Franklin County Aug. 28, 1990), *aff'd*, 63 Ohio St. 3d 498, 589 N.E.2d 24 (1992) (noting that sheriff's department would have access under R.C. 149.43 to any records of the board that qualified as public records). Excluded from the definition of public record for purposes of R.C. 149.43, however, are "records the release of which is prohibited by state or federal law." R.C. 149.43(A)(1). Various federal and state statutes prohibit the release of information concerning ADC, GA, and DA recipients except for certain statutorily described purposes. *See* 42 U.S.C. § 602(a)(9) (Supp. IV 1992) and R.C. 5107.02(C) (ADC); R.C. 5113.08 (GA); R.C. 5115.03(C) (DA); R.C. 329.091 (ADC, GA, and DA). Thus, law enforcement agencies do not have a right of access under the public records law to information held by county human services departments concerning ADC, GA, or DA recipients; instead they have only such access as is permitted by the statutes governing those programs. *See generally* Op. No. 90-007 (discussing the fact that although no single state or federal law prohibits the disclosure of public assistance information, there are a number of statutes that set out varying standards of confidentiality for individual public assistance programs).

> *addresses of recipients of aid to dependent children* or applicants for such aid or any other disclosure of information concerning such recipients or applicants *are furnished to or held by any other agency, department, or officer of government, such agency, department, or officer of government shall adopt rules necessary to prevent* the publication of lists thereof or the disclosure of information concerning applicants and recipients or *the use of such lists or information for purposes not directly connected with the administration of aid to dependent children.*
> No person shall, *except for purposes directly connected with the administration of public assistance, and in accordance with the rules of the department* solicit, disclose, receive, make use of, or authorize, knowingly permit, participate in, or acquiesce in the use of, any list of or names of, persons applying for or receiving such assistance, directly or indirectly derived from the records, papers, files, or communications of the department or county administrations or agencies thereof, or acquired in the course of the performance of official duties. (Emphasis added.)

Federal law also requires the state plan for ADC to "provide safeguards which restrict the use or disclosure of information concerning applicants or recipients" to specified purposes, which purposes include those directly connected with administration of the plan. 42 U.S.C. § 602(a)(9) (Supp. IV 1992).

The responsibilities and authority of the Department of Human Services with respect to release of information from GA records are governed by R.C. 5113.08, which states:

> The *state department of human services shall adopt rules* in accordance with section 111.15 of the Revised Code governing the custody, use, and preservation of general assistance records, papers, files, and communications of the state department, county departments, and all other state and county offices and officials participating in administration of general assistance. *Each government entity that acquires or maintains records that include names of or other information about general assistance applicants or recipients shall adopt such rules as are necessary to prevent disclosure of the names or information except as required for administration of general assistance* or as required by other sections of the Revised Code.
> *Except for purposes directly connected with administration of general assistance* or as required by any other section of the Revised Code, no person shall solicit, disclose, receive, make use of, or knowingly permit, participate in, or acquiesce in the use of names or other information about general assistance applicants or recipients that is derived from the records, papers, files, or communications of any government entity or acquired in the course of performing official duties. Any use of names or other information about general assistance applicants or recipients that is permitted by this division shall be in accordance with the rules adopted by the state department. (Emphasis added.)

R.C. 5115.03(C) provides for confidentiality of DA records in language identical to that of R.C. 5113.08 as set out above.

Additionally, R.C. 329.091, which governs all three programs, states:

> No person, firm, association, corporation, or other agency shall solicit, disclose, receive, use, or authorize, participate in, or acquiesce in the use of any lists or names of any recipients of aid for commercial or political purposes of any nature or for *any purpose not directly connected with the administration of public assistance*. (Emphasis added.)

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R.C. 5107.02(C), R.C. 5113.08, and R.C. 5115.03(C) expressly authorize the Department of Human Services to promulgate rules governing the custody and use of the records of ADC, GA, and DA recipients. Such authority reasonably includes the power to promulgate rule 5101:1-1-03, which governs the disclosure of information in such records to other parties. The scope of this authority, however, is also limited by the same statutes. R.C. 5107.02(C), R.C. 5113.08, R.C. 5113.03(C), and R.C. 329.091 limit the disclosure of ADC, GA, and DA records and information obtained therefrom to *purposes directly connected with the administration of* the particular program. Thus, the fugitive felon provision of rule 5101:1-1-03(C)(5) is within the scope of the Department's rule-making authority under R.C. 5107.02(C) if such disclosure is for purposes directly connected with the administration of ADC, GA, and DA.

Statutes Governing the Administration of ADC, GA, and DA

The authority to determine the administrative needs of the ADC, GA, and DA programs is a responsibility that the General Assembly has vested in the Department of Human Services. R.C. 5113.05 provides that the Department of Human Services "shall adopt rules governing the administration of general assistance." Similarly, R.C. 5115.03(A)(1) requires the Department of Human Services to "[a]dopt rules governing the administration of disability assistance." R.C. 5107.02(A)(1) vests the Department of Human Services with authority to prepare the state plan for participation in ADC, and R.C. 5107.02(A)(5) vests the Department of Human Services with authority to promulgates rules "necessary to the efficient operation of the plan." *See generally Carroll v. Department of Admin. Services*, 10 Ohio App. 3d 108, 110, 460 N.E.2d 704, 706 (Franklin County 1983) ("[t]he purpose of administrative rulemaking is to facilitate the administrative agency's placing into effect the policy declared by the General Assembly in the statutes to be administered by the agency"); *State ex rel. Curtis v. DeCorps*, 134 Ohio St. 295, 298, 16 N.E.2d 459, 461 (1938) ("[i]t is not conceivably possible for the Legislature to prescribe the entire host of details incident to administration. Of necessity, many of these must be left to the administrative bodies charged with putting the policy into effect"). Absent a conflict with the express terms of a statute, a rule that bears a reasonable relationship to the legislative purpose evidenced by the statutes governing a particular program is a valid rule. *See Carroll*, 10 Ohio App. 3d at 110, 460 N.E.2d at 706. With respect to matters where the statutes provide no express guidance, the administrative agency may exercise its discretion and choose among various reasonable interpretations to facilitate a practical and effective application of the law. The judgment of the agency in this respect is entitled to deference by the courts. *Chevron*, 467 U.S. at 843-44; *Brown*, 92 Ohio St. at 311, 110 N.E. at 745; *Lopez*, 88 Ohio App. 3d at 233-34, 623 N.E.2d at 691.

Accordingly, pursuant to the authority granted by R.C. 5107.02(A), R.C. 5113.05, and R.C. 5115.03(A)(1), if the Department of Human Services has determined in a reasonable exercise of its discretion that rule 5101:1-1-03(C)(5) serves a purpose directly connected with the administration of ADC, GA, and DA, the rule is valid.

Rule 5101:1-1-03(C)(5) Is a Valid Rule with Respect to ADC

As noted previously, ADC is a federal public assistance program. 42 U.S.C. § 602(a)(9) (Supp. IV) provides that all state ADC plans must provide safeguards that restrict the use of or disclosure of information concerning applicants and recipients to five specific purposes: (1) the administration of the ADC program or several other specified Social Security Act programs; (2) any investigation, prosecution, or criminal or civil proceeding conducted in connection with such programs; (3) the administration of any other federal or federally-assisted program that provides assistance or services to individuals on the basis of need; (4) any audit of such programs; and (5) the reporting to appropriate authorities of known or suspected child abuse. 42 U.S.C. § 602(a)(9) goes on to state, however, that:

> such safeguards *shall not prevent* the State agency or the local agency responsible for the administration of the State plan in the locality *(whether or not the State has enacted legislation allowing public access to Federal welfare records)* from furnishing a State or local law enforcement officer, upon his request, with the current address of any recipient if the officer furnishes the agency with such recipient's name and social security account number and satisfactorily demonstrates that such recipient is a fugitive felon, that the location or apprehension of such felon is within the officer's official duties, and that the request is made in the proper exercise of those duties[.] (Emphasis added.)

See also 45 C.F.R. § 205.50(a)(1)(v) (1993) (a State plan for ADC "must provide," pursuant to state law, that "[t]he State or local agency responsible for the administration of the State plan has authority to disclose the current address of a recipient to a State or local law enforcement officer at his or her request," under the same conditions specified in 42 U.S.C. § 602(a)(9)); 45 C.F.R. § 205.50(a)(2)(v) (providing that requests for information from law enforcement officers are subject to the same policies as requests from other outside sources "*except as provided* for under paragraph (a)(1)(v)[*supra*] *with respect to fugitive felons*" (emphasis added)).

Although no state is required to participate in the ADC program, states that choose to do so must comply with the requirements imposed by federal law. *See King v. Smith*, 392 U.S. 309, 316-17 (1968). Federal law requires as a condition of participation in the ADC program that the state and local agencies administering the program have the authority to disclose to law enforcement officials the addresses of ADC recipients who are fugitive felons. *See* 45 C.F.R. § 205.50. Because of this federal requirement, rule 5101:1-1-03(C)(5) is "directly connected with the administration of aid to dependent children," and, as such, does not run afoul of the limitations upon disclosure of information imposed by R.C. 5107.02(C). Further, pursuant to R.C. 5107.02(A)(1) and (A)(5), that

the General Assembly has expressly authorized the Department of Human Services to promulgate rules for administration of the ADC program which conform to the federal requirements. Accordingly, the provisions of rule 5101:1-1-03(C)(5) apply to information held by county departments of human services concerning the ADC program.

Rule 5101:1-1-03(C)(5) Is a Valid Rule with Respect to GA and DA

There are no statutes governing the GA and DA programs that expressly address the issue of disclosure of information about recipients who are fugitive felons. Clearly, however, the proper determination of eligibility and the investigation of possible welfare fraud are matters directly connected with the administration of GA and DA. *See* Rule 5101:1-1-03(B)(2) (purposes directly connected with administration "include establishing eligibility, determining amount of assistance"). If the disclosure or sharing of information about recipients who are fugitive felons thus can be judged to serve either or both of these purposes, then they would appear to be "directly connected with" administration of GA and DA, in conformity with the governing statutes.

A recipient of GA or DA must be a resident of the county. 15 Ohio Admin. Code 5101:1-5-03. Further, the number of individuals residing together and their relationship to each other has a bearing on the amount and type of assistance that can be provided to them individually or as an assistance group. *See, e.g.*, 15 Ohio Admin. Code 5101:1-5-10. *See generally* R.C. 5113.06 and R.C. 5115.05 (providing for rules establishing residence, living arrangement, assistance group composition, and other eligibility factors with respect to GA and DA). By definition, a fugitive felon is an individual "who has departed from his usual abode." Rule 5101:1-1-03(C)(5). Thus, when an individual whom a law enforcement agency has identified as a fugitive felon is determined to be a recipient of GA or DA, serious questions are raised concerning the eligibility of that person to receive assistance and the identity of the actual recipient of the assistance checks being sent to the address the county department of human services has on record for that individual. If the address is not the individual's true residence, then the individual may not be eligible for, or may not actually be receiving, the benefits being sent there. If the individual, because of his fugitive status, is no longer present at that address, then it is possible that some other individual is misappropriating the assistance check. Thus, it is appropriate for the county department of human services to share information about the individual's address with the law enforcement agency in order to investigate whether or not the individual actually resides at that address, or whether a fraud is being perpetrated on the GA or DA program.

Moreover, there is an express legislative mandate that individuals who are imprisoned are not eligible for GA or DA. R.C. 5113.03(C) and R.C. 5115.07 provide that GA and DA "shall not be given to persons who reside in a ... jail, or public institution." The issuance of a felony warrant is the beginning of a legal process that leads to a determination of whether or not an individual should be incarcerated. Thus, the resolution of that legal process has a direct bearing on the individual's eligibility for GA and DA. Although it is true that service of the warrant does not inevitably lead to incarceration and corresponding ineligibility for GA or DA, there is no other means of initiating the legal process in order to resolve the issue. The sharing of information necessary to resolve this issue is, therefore, analogous to the sharing and cross-checking of financial information about the recipient

in order to confirm financial eligibility. *See, e.g., Greater Cleveland Welfare Rights Org. v. Bauer*, 462 F. Supp. 1313 (N.D. Ohio 1978) (involving the computer matching of social security numbers of ADC recipients with the social security numbers of individuals for whom the Social Security Administration held earning records).

In light of the above considerations, it is reasonable for the Department of Human Services to determine that disclosure to law enforcement officers of the addresses of fugitive felons who are recipients of GA or DA serves purposes that are directly connected with administration of the requirements of R.C. 5113.03(C) and R.C. 5115.07. *See generally Chevron*, 467 U.S. at 843-44 (unless the language of a statute directly addresses the precise question at issue, the Court must defer to any reasonable agency construction of the statutory language); *accord Brown*, 92 Ohio St. at 311, 110 N.E. at 745; *Lopez*, 88 Ohio App. 3d at 233-34, 623 N.E.2d at 691. Accordingly, application of the provisions of rule 5101:1-1-03(C)(5) to the GA and DA programs is within the rule-making authority of the Department with respect to both programs.

Additionally, it should be noted that although separate statutes govern the disclosure of ADC, GA, and DA information, the language used is identical with respect to the issue of disclosure. As previously discussed, R.C. 5107.02, R.C. 5113.08, and R.C. 5115.03 each grant the Department of Human Services the authority to adopt rules governing the use of information derived from the pertinent program, subject to the restriction that information only be released for purposes directly connected with the administration of that program. It is therefore reasonable and indeed is advisable for the Department of Human Services to construe this language in a similar manner for all three public assistance programs. *See generally Bobb v. Marchant*, 14 Ohio St. 3d 1, 3, 469 N.E.2d 847, 849 (1984) ("[s]tatutes relating to the same subject matter should be construed *in pari materia*"); *Warner v. Ohio Edison Co.*, 152 Ohio St. 303, 89 N.E.2d 463 (1949) (syllabus, paragraph one) (same).[4]

Restrictions on the Use of Social Security Numbers

The final concern raised by your request is whether section 7(b) of the Privacy Act of 1974, Pub. L. No. 93-579, 88 Stat. 1896, 1909 (appearing at 5 U.S.C. § 552a note (1988)) prohibits the use of a social security number of a person receiving public assistance as a means of identifying whether that person is a fugitive felon. Section 7(b) states: "Any Federal, State, or local government agency which requests an individual to disclose his social security account number shall inform that individual whether that disclosure is mandatory or voluntary, by what statutory or other authority such number is solicited, and what uses will be made of it." The legislative history of section 7(b) indicates that "[t]his provision is intended to permit an individual to make an informed decision whether or not to disclose the social security account number, and it is intended to bring recognition

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[4] Although this opinion concludes that rule 5101:1-1-03(C)(5) is a valid rule with respect to ADC, GA, and DA, it is nonetheless true that the issue is a difficult one because the language of the governing statutes is not as clear as it could be. It might, therefore, be thought appropriate to undertake a legislative change that amends the statutes to address this topic more explicitly.

to, and discourage, unnecessary or improper uses of that [social security] number." *Greater Cleveland Welfare Rights Org.*, 462 F. Supp. at 1319 n.3 (quoting *Analysis of House and Senate Compromise Amendments to the Federal Privacy Act, printed in* 120 Cong. Rec. S21, 817 (daily ed. Dec. 17, 1974) *and in* 120 Cong. Rec. H12, 243 (daily ed. Dec. 18, 1974)).

Section 7(b) does not itself prohibit the use of social security numbers for any purpose.[5] Rather, it imposes an affirmative duty on governmental agencies to make certain disclosures to the individuals who are asked to provide their numbers. *See State v. Fields*, No. 41779, slip op. at 5 (Ct. App. Cuyahoga County Sept. 25, 1980) (unreported). In order to allow the individual to make an informed decision whether to provide the social security number, the governmental agency must make a meaningful disclosure of the uses to which that number will be put. *Greater Cleveland*, 462 F. Supp. at 1321. If an agency has failed to make meaningful disclosure, but the use made of the social security number is not otherwise prohibited, the remedy for violation of section 7(b) is an order requiring proper disclosure in the future.[6] *Id.*

In the *Greater Cleveland* case, the state and county departments of public welfare had informed applicants that their social security numbers would be used to verify information needed to determine eligibility for ADC. The court found this disclosure was not meaningful because it did

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[5] The Ohio Supreme Court recently held that the social security numbers of city employees contained in city payroll files are not public records subject to disclosure under R.C. 149.43, because federal law, specifically the federal constitutional right to privacy, prohibits their disclosure. *State ex rel. Beacon Journal Publishing Co. v. City of Akron*, 70 Ohio St. 3d 605, 612, 640 N.E.2d 164, 169 (1994). The court reasoned that this constitutional protection arose because section 7 of the Privacy Act creates a legitimate expectation of privacy in one's social security number, which expectation was not counterbalanced by any legitimate interest justifying disclosure of the social security numbers of city employees. The court did not hold that section 7 itself prohibits disclosure, however, and in any event the court's conclusion that section 7 creates a legitimate expectation of privacy in one's social security number under the facts of *Beacon Journal* does not require a similar result with respect to the situation you have described. In your circumstances, the county department of human services has not been asked to disclose any social security numbers. Further, the use of social security numbers for the administration of state public assistance programs is expressly permitted under 42 U.S.C. § 405(c)(2)(C)(ii). This latter provision of federal law "has specifically overruled the limitations imposed by § 7a with respect to _general public assistance_ programs of a state or subdivision." *Doe v. Sharp*, 491 F. Supp. 346, 349 (D. Mass. 1980).

[6] The court expressly declined to grant an order preventing the use of information gained by the undisclosed use of the social security numbers. *Greater Cleveland*, 462 F. Supp. at 1320; *see also State v. Hughes*, 2 Ohio App. 3d 443, 442 N.E.2d 786 (Cuyahoga County 1981) (suppression of evidence in a criminal prosecution of ADC fraud is not appropriate remedy for violation of §7(b) disclosure requirements); *State v. Fields*, No. 41779 (Ct. App. Cuyahoga County Sept. 25, 1980) (unreported). *But see Yeager v. Hackensack Water Co.*, 615 F. Supp. 1087 (D.N.J. 1985) (enjoining use of information gained until agency made retroactive disclosure of uses).

not disclose specifically that the social security numbers would be used to check earnings records held by the Social Security Administration and that the applicant or recipient could be subject to prosecution if a match revealed fraud. Since the use made of the social security numbers was not impermissible per se, the court issued an order requiring the state and county departments of public welfare to comply with section 7(b) in the future and to submit proposed disclosure statement to the court for approval.

Thus, section 7(b) of the Privacy Act of 1974 does not prohibit the use of a social security number to identify a fugitive felon who is the recipient of ADC. However, because such use of social security numbers exposes individuals to the risk of arrest and prosecution, section 7(b) requires that county human service departments disclose that use and risk to persons who are asked to supply their social security numbers for purposes of obtaining ADC, GA and DA.

Conclusion

It is, therefore, my opinion and you are hereby advised that:

1. Pursuant to R.C. 5107.02 and 42 U.S.C. § 602(a)(9) (Supp. IV 1992), and in accordance with the conditions specified in [1993-1994 Monthly Record] Ohio Admin. Code 5101:1-1-03(C)(5) at 1479, a county human services department may release the address of a current recipient of aid to dependent children to a law enforcement agency that has authority to apprehend an individual under an outstanding felony warrant.

2. Pursuant to R.C. 5113.03(C), R.C. 5113.05, and R.C. 5113.08, and in accordance with the conditions specified in [1993-1994 Monthly Record] Ohio Admin. Code 5101:1-1-03(C)(5) at 1479, a county human services department may release the address of a current recipient of general assistance to a law enforcement agency that has authority to apprehend an individual under an outstanding felony warrant.

3. Pursuant to R.C. 5115.03(A), R.C. 5115.03(C), and R.C. 5115.07, and in accordance with the conditions specified in [1993-1994 Monthly Record] Ohio Admin. Code 5101:1-1-03(C)(5) at 1479, a county human services department may release the address of a current recipient of disability assistance to a law enforcement agency that has authority to apprehend an individual under an outstanding felony warrant.

4. Section 7(b) of the Privacy Act of 1977, Pub. L. No. 93-579, 88 Stat. 1896 (appearing at 5 U.S.C. § 552a note (1988)) requires that recipients of aid to dependent children under R.C. Chapter 5107 and 42 U.S.C. §

602 (1988 & Supp. IV 1992), general assistance under R.C. Chapter 5113, and disability assistance under R.C. Chapter 5115 be told that their social security numbers will be matched against outstanding felony warrants and that a match can result in their arrest and prosecution.

Respectfully,

LEE FISHER
Attorney General

November 29, 1994

Arnold R. Tompkins, Director
Department of Human Services
30 East Broad Street
Columbus, Ohio 43266-0423

SYLLABUS: 94-084

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