August 15, 1997

OPINION NO. 97-038

The Honorable Alan R. Mayberry
Wood County Prosecuting Attorney
One Courthouse Square
Bowling Green, Ohio 43402

You have requested an opinion concerning the disclosure of information by county sheriffs. Specifically, you wish to know whether information submitted, pursuant to R.C. Chapter 2950, to a county sheriff by an individual who has been convicted of or pleaded guilty to a sexually oriented offense[1] is a public record that must be made available for inspection to any person under R.C.

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[1] For purposes of R.C. Chapter 2950, unless the context clearly requires otherwise, the phrase "sexually oriented offense" means any of the following offenses:

> (1) Regardless of the age of the victim of the offense, a violation of section 2907.02, 2907.03, 2907.05, or 2907.12 of the Revised Code;
> (2) Any of the following offenses involving a minor, in the circumstances specified:
> (a) A violation of section 2905.01, 2905.02, 2905.03, 2905.04, 2905.05, or 2907.04 of the Revised Code when the victim of the offense is under eighteen years of age;
> (b) A violation of section 2907.21 of the Revised Code when the person who is compelled, induced, procured, encouraged, solicited, requested, or facilitated to engage in, paid or agreed to be paid for, or allowed to engage in the sexual activity in question is under eighteen years of age;
> (c) A violation of division (A)(1) or (3) of section 2907.321 or 2907.322 of the Revised Code;
> (d) A violation of division (A)(1) or (2) of section 2907.323 of the Revised Code;
> (e) A violation of division (B)(5) of section 2919.22 of the Revised Code when the child who is involved in the offense is under eighteen years of age.
> (3) Regardless of the age of the victim of the offense, a violation of section 2903.01, 2903.02, 2903.11, or 2905.01 of the Revised Code, or of division (A) of section 2903.04 of the Revised Code, that is committed with a purpose to gratify the sexual needs or desires of the offender;

149.43(B). This information is described specifically in R.C. 2950.04-.06.

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(4) A sexually violent offense;

(5) A violation of any former law of this state that was substantially equivalent to any offense listed in division (D)(1), (2), (3), or (4) of this section;

(6) A violation of an existing or former municipal ordinance or law of another state or the United States, or a violation under the law applicable in a military court, that is or was substantially equivalent to any offense listed in division (D)(1), (2), (3), or (4) of this section;

(7) An attempt to commit, conspiracy to commit, or complicity in committing any offense listed in division (D)(1), (2), (3), (4), (5), or (6) of this section.

R.C. 2950.01(D).

R.C. Chapter 2950 sets forth provisions for the registration of sexual predators, habitual sex offenders,[2] and other offenders who have committed sexually oriented offenses and for community notification regarding sexual predators and habitual sex offenders who are about to be or have been released from imprisonment, a prison term, or other confinement and who will live in or near a particular neighborhood or who otherwise will live in or near a particular neighborhood. *See generally* R.C. 2950.02. Pursuant to this chapter, an individual who is convicted of or pleads guilty to, or has been convicted of or pleaded guilty to, a sexually oriented offense and who is described in division (A)(1)-(3) of R.C. 2950.04[3] must register with the sheriff of the county in which he resides or is temporarily domiciled for more than seven days. R.C. 2950.04. As part of the registration, an individual is required to provide the county sheriff with his current residence address, the name and address of his employer, if the individual is employed at the time of registration or if the individual knows at the time of registration that he will be beginning employment with that employer subsequent to registration, and any other information required by the Bureau of Criminal Identification and Investigation. R.C. 2950.04(C).[4] In addition, an individual who is required to register pursuant to R.C. 2950.04 is required to provide written notice of any residence address change to the county sheriff with whom he most recently registered, R.C. 2950.05, and to periodically verify his current residence address with the county sheriff with whom he most recently registered, R.C. 2950.06. Thus, R.C. Chapter 2950 requires sexual predators, habitual sex offenders,

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[2] R.C. 2950.01 provides, in part:

> As used in [R.C. Chapter 2950], unless the context clearly requires otherwise:
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> ....
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> (B) "Habitual sex offender" means a person who is convicted of or pleads guilty to a sexually oriented offense and who previously has been convicted of or pleaded guilty to one or more sexually oriented offenses.
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> ....
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> (E) "Sexual predator" means a person who has been convicted of or pleaded guilty to committing a sexually oriented offense and is likely to engage in the future in one or more sexually oriented offenses.

See generally R.C. 2950.09 (setting forth the criteria and procedures for classifying an individual as an habitual sex offender or sexual predator). Accordingly, habitual sex offenders and sexual predators are individuals who have been convicted of or pleaded guilty to a sexually oriented offense.

[3] R.C. 2950.04(A)(1)-(3) describes the following: (1) individuals who have been sentenced to a prison term, a term of imprisonment, or any other type of confinement for a sexually oriented offense on or after July 1, 1997; (2) individuals who have been sentenced for a sexually oriented offense on or after July 1, 1997; and (3) habitual sex offenders who, prior to July 1, 1997, were required under R.C. Chapter 2950 to register with the chief of police of a city or a county sheriff.

[4] The registration form to be signed by the sexually oriented offender also shall include the offender's photograph. R.C. 2950.04(C).

and other individuals who have been convicted of or pleaded guilty to a sexually oriented offense to submit certain specified information to the sheriff of the county in which they reside or are temporarily domiciled for more than seven days.

With respect to the disclosure of information held by a governmental entity, R.C. 149.43(B) states that, "[a]ll public records shall be promptly prepared and made available for inspection to any person at all reasonable times during regular business hours." For purposes of R.C. 149.43(B), R.C. 149.43(A)(1) defines a "public record" as follows:

"Public record" means any record that is kept by any public office ... except that "public record" does not mean any of the following:

(a) Medical records;

(b) Records pertaining to probation and parole proceedings;

(c) Records pertaining to actions under section 2151.85 of the Revised Code and to appeals of actions arising under that section;

(d) Records pertaining to adoption proceedings, including the contents of an adoption file maintained by the department of health under section 3705.12 of the Revised Code;

(e) Information in a record contained in the putative father registry established by section 3107.062 of the Revised Code, regardless of whether the information is held by the department of human services or, pursuant to section 5101.313 of the Revised Code, the division of child support in the department or a child support enforcement agency;

(f) Records listed in division (A) of section 3107.42 of the Revised Code or specified in division (A) of section 3107.52 of the Revised Code;

(g) Trial preparation records;

(h) Confidential law enforcement investigatory records;

(i) Records containing information that is confidential under section 2317.023 or 4112.05 of the Revised Code;

(j) DNA records stored in the DNA database pursuant to section 109.573 of the Revised Code;

(k) Inmate records released by the department of rehabilitation and correction to the department of youth services or a court of record pursuant to division (E) of section 5120.21 of the Revised Code;

(l) Records maintained by the department of youth services pertaining to children in its custody released by the department of youth services to the department of rehabilitation and correction pursuant to section 5139.05 of the Revised Code;

(m) Intellectual property records;

(n) Donor profile records;

(o) Records the release of which is prohibited by state or federal law.

R.C. 149.43 is intended to be liberally construed to ensure that governmental records be open and made available to the public. *State ex rel. The Miami Student v. Miami Univ.*, 79 Ohio St. 3d 168, 170, 680 N.E.2d 956, 958 (1997); *see State ex rel. Gannett Satellite Info. Network v. Shirey,*

78 Ohio St. 3d 400, 401, 678 N.E.2d 557, 559 (1997). Exceptions to disclosure must be strictly construed, and any doubt is to be resolved in favor of disclosure. *State ex rel. The Miami Student v. Miami Univ.*, 79 Ohio St. 3d at 171, 680 N.E.2d at 959. "R.C. 149.43 therefore provides for full access to all public records upon request unless the requested records fall within one of the specific exceptions listed in [R.C. 149.43]." *Id.* at 170, 680 N.E.2d at 958.

With these principles in mind, let us now consider the issue whether information submitted to a county sheriff pursuant to R.C. Chapter 2950, *see* R.C. 2950.04-.06, by an individual who has been convicted of or pleaded guilty to a sexually oriented offense is a public record. Pursuant to R.C. 149.011, a county sheriff's department is a "public office," and information retained by a county sheriff pursuant to R.C. Chapter 2950 is a "record" since it serves to document the operations and activities of the sheriff's department.[5] *See State ex rel. M.A.D.D. v. Gosser*, 20 Ohio St. 3d 30, 32, 485 N.E.2d 706, 709 (1985). Thus, information submitted to a county sheriff pursuant to R.C. Chapter 2950 by an individual who has been convicted of or pleaded guilty to a sexually oriented offense is a public record which is subject to disclosure unless such information falls within one of the exceptions listed in R.C. 149.43(A)(1)(a)-(o).

A review of the exceptions set forth in R.C. 149.43(A)(1)(a)-(n) discloses that none of these exceptions excepts from the definition of public record information submitted to a county sheriff pursuant to R.C. Chapter 2950 by an individual who has been convicted of or pleaded guilty to a sexually oriented offense. In addition, our research has not revealed any provision of law prohibiting a county sheriff from releasing the information submitted to him under R.C. Chapter 2950. Nevertheless, a portion of the information submitted to a county sheriff pursuant to R.C. Chapter 2950 may comprise "[r]ecords the release of which is prohibited by state or federal law."[6]

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[5] R.C. 149.011 defines, for purposes of R.C. Chapter 149, the terms "public office" and "records" as follows:

> (A) "Public office" includes any state agency, public institution, political subdivision, or any other organized body, office, agency, institution, or entity established by the laws of this state for the exercise of any function of government.
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> ....
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> (G) "Records" includes any document, device, or item, regardless of physical form or characteristic, created or received by or coming under the jurisdiction of any public office of the state or its political subdivisions, which serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office.

[6] The Ohio Supreme Court has stated that every individual enjoys a federal constitutional "right to privacy which protects against governmental disclosure of the private details of one's life." *State ex rel. Beacon Journal Publ. Co. v. City of Akron*, 70 Ohio St. 3d 605, 608, 640 N.E.2d 164, 167 (1994). An individual's constitutional right to privacy prohibits a governmental entity from publicly disclosing highly sensitive personal information concerning that individual. *Id.* The disclosure of an individual's social security account number violates an individual's constitutional right to privacy. A

R.C. 149.43(A)(1)(o). If a portion of the information submitted to a county sheriff pursuant to R.C. Chapter 2950 comprises a record that is exempt from release by state or federal law, that portion of information is not a public record, *see* R.C. 149.43(A)(1)(o), and thus is not subject to disclosure pursuant to R.C. 149.43(B). A county sheriff thus must redact the portion of information that is not a public record from the information that he makes available to the public under R.C. 149.43(B). *See generally State ex rel. Yant v. Conrad*, 74 Ohio St. 3d 681, 684, 660 N.E.2d 1211, 1214 (1996) (finding that the identities of sexual harassment victims who have been promised confidentiality are excepted from disclosure under R.C. 149.43(A)(2)(a) and (b) and that a governmental entity is required to redact such identities from the public record); *State ex rel. Nat'l Broadcasting Co. v. Cleveland*, 38 Ohio St. 3d 79, 85, 526 N.E.2d 786, 791-92 (1988) (if a court finds that a public record contains excepted information, the excepted information must be redacted and any remaining information must be released). Accordingly, information submitted to a county sheriff pursuant to R.C. Chapter 2950 by an individual who has been convicted of or pleaded guilty to a sexually oriented offense is a public record that must be made available for inspection to any person under R.C. 149.43(B), except to the extent such information comprises "[r]ecords the release of which is prohibited by state or federal law," as understood by R.C. 149.43(A)(1)(o).

As additional support for this conclusion, R.C. 2950.11(E) states that, "[a]ll information that a sheriff possesses regarding a sexual predator or a habitual sex offender that is described in division (B) of this section[7] and that must be provided in a notice required under division (A) or (C) of this

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governmental entity is, therefore, prohibited from releasing an individual's social security account number. *State ex rel. WLWT-TV5 v. Leis*, 77 Ohio St. 3d 357, 361, 673 N.E.2d 1365, 1369 (1997); *State ex rel. Beacon Journal Publ. Co. v. City of Akron. But see generally State ex rel. Cincinnati Enquirer v. Hamilton County*, 75 Ohio St. 3d 374, 378, 662 N.E.2d 334, 337-38 (1996) (per curiam) (911 tapes are public records and it makes no difference that the disclosure of the tapes might reveal social security account numbers); 1996 Op. Att'y Gen. No. 96-034 (syllabus) ("[t]he decision of the Ohio Supreme Court in *State ex rel. Beacon Journal Publ. Co. v. City of Akron*, 70 Ohio St. 3d 605, 640 N.E.2d 164 (1994), does not impose an obligation upon a county recorder to remove or obliterate social security account numbers that appear on mortgages, mortgage releases, veterans discharges, and financing statements before he records those instruments").

[7] R.C. 2950.11(B) provides as follows:

> The notice required under division (A) of this section shall include all of the following information regarding the subject offender:
> (1) The offender's name;
> (2) The address or addresses at which the offender resides;
> (3) The sexually oriented offense of which the offender was convicted or to which the offender pleaded guilty;
> (4) A statement that the offender has been adjudicated as being a sexual predator and that, as of the date of the notice, the court has not entered a determination that the offender no longer is a sexual predator, or a statement that the sentencing judge has determined that the offender is a habitual sex offender.

section[8] is a public record that is open to inspection under section 149.43 of the Revised Code." (Footnotes added.) In addition, R.C. 2950.02 states:

> (A) The general assembly hereby determines and declares that it recognizes and finds all of the following:
> (1) If the public is provided adequate notice and information about sexual predators, habitual sex offenders, and certain other offenders who commit sexually oriented offenses, members of the public and communities can develop constructive plans to prepare themselves and their children for the sexual predator's, habitual sex offender's, or other offender's release from imprisonment, a prison term, or other confinement. This allows members of the public and communities to meet with members of law enforcement agencies to prepare and obtain information about the rights and responsibilities of the public and the communities and to provide education and counseling to their children.
> ....
> (B) The general assembly hereby declares that, in providing in this chapter for registration regarding sexual predators, habitual sex offenders, and offenders who have committed sexually oriented offenses and for community notification regarding sexual predators and habitual sex offenders who are about to be or have been released from imprisonment, a prison term, or other confinement and who will live in or near a particular neighborhood or who otherwise will live in or near a particular neighborhood, it is the general assembly's intent to protect the safety and general welfare of the people of this state. The general assembly further declares that it is the policy of this state to require the exchange in accordance with this chapter of relevant information about sexual predators and habitual sex offenders among public agencies and officials and to authorize the release in accordance with this chapter of necessary and relevant information about sexual predators and habitual sex offenders to members of the general public as a means of assuring public protection and that the exchange or release of that information is not punitive.

These provisions thus unequivocally state that information submitted to a county sheriff pursuant to R.C. Chapter 2950 by a sexual predator or habitual sex offender is a public record.

In your letter, however, you have indicated that the presence of this language in R.C. Chapter 2950 may indicate a legislative intent to prohibit the disclosure of information submitted by individuals who have been convicted of or pleaded guilty to a sexually oriented offense, but who have not been adjudicated as sexual predators or determined to be habitual sex offenders. For the reasons that follow, it is our opinion that the language of R.C. Chapter 2950 does not convey such a legislative intention.

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[8] Divisions (A) and (C) of R.C. 2950.11 set forth the persons a county sheriff must notify when a sexual predator or certain habitual sex offenders register.

First, it must be presumed that the General Assembly was cognizant of R.C. 149.43 and the judicial construction of that section when it enacted R.C. Chapter 2950. *See East Ohio Gas Co. v. Akron*, 2 Ohio App. 2d 267, 207 N.E.2d 780 (1965), *aff'd*, 7 Ohio St. 2d 73, 218 N.E.2d 608 (1966). As such, it is reasonable to conclude that the General Assembly was aware that R.C. 149.43 provides full access to all public records upon request unless the requested records fall within one of the specific exceptions listed in R.C. 149.43. Thus, if the General Assembly had intended to prohibit the disclosure of information submitted by individuals who have been convicted of or pleaded guilty to a sexually oriented offense, but who have not been adjudicated as sexual predators or determined to be habitual sex offenders, it would have expressly stated such intention, having done so in other instances. *See, e.g.*, R.C. 3701.241(A)(7) ("[i]nformation obtained or maintained under the partner notification system is not a public record under section 149.43 of the Revised Code"); R.C. 3793.15(D) (any record or information that is obtained or maintained by the Department of Alcohol and Drug Addiction Services in connection with a program concerning addicted pregnant women and their children and that "could enable the identification of any woman or child described in division (A)(1) or (4) of this section is not a public record subject to inspection or copying under section 149.43 of the Revised Code"); R.C. 3999.36(C) ("[t]he notice received by the superintendent [of insurance] under division (B) of this section is not a public record under section 149.43 of the Revised Code").

Moreover, the language of R.C. 2950.02 makes it clear that in order to protect the safety and general welfare of the people of the state of Ohio, information about any individuals who have been convicted of or pleaded guilty to sexually oriented offenses must be made available to members of the local community. This allows members of the public and communities to develop constructive plans to prepare themselves and their children for the release of these individuals from imprisonment, a prison term, or other confinement, and to prepare and obtain information about the rights and responsibilities of the public and communities and to provide education and counseling to their children. A determination that information submitted to a county sheriff in accordance with the mandates of R.C. Chapter 2950 is not a public record thus would contravene the intentions of the General Assembly expressed in R.C. 2950.02. Therefore, absent specific language in R.C. Chapter 2950 prohibiting the disclosure of information submitted by individuals who have been convicted of or pleaded guilty to a sexually oriented offense, but who have not been adjudicated as sexual predators or determined to be habitual sex offenders, it must be concluded that the General Assembly did not intend to except such information from the definition of public record set forth in R.C. 149.43(A)(1).

Based on the foregoing, it is my opinion and you are hereby advised that information submitted to a county sheriff pursuant to R.C. Chapter 2950 by an individual who has been convicted of or pleaded guilty to a sexually oriented offense is a public record that must be made available for inspection to any person under R.C. 149.43(B), except to the extent such information comprises "[r]ecords the release of which is prohibited by state or federal law," as understood by R.C. 149.43(A)(1)(o).

Respectfully,

BETTY D. MONTGOMERY
Attorney General

August 15, 1997

The Honorable Alan R. Mayberry
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SYLLABUS: 97-038

Information submitted to a county sheriff pursuant to R.C. Chapter 2950 by an individual who has been convicted of or pleaded guilty to a sexually oriented offense is a public record that must be made available for inspection to any person under R.C. 149.43(B), except to the extent such information comprises "[r]ecords the release of which is prohibited by state or federal law," as understood by R.C. 149.43(A)(1)(o).