

June 28, 2017

Cynthia C. Dungey, Director
Ohio Department of Job and Family Services
30 East Broad Street
Columbus, Ohio 43215

SYLLABUS:

2017-019

A county public children services agency that files a missing child report pursuant to R.C. 5153.16(A)(23) has a mandatory duty under 13 Ohio Admin. Code 5101:2-33-21(G)(1) (2016-2017 Supplement) to furnish a photograph of the missing child to the local law enforcement agency responsible for investigating the report when the photograph is determined to be relevant to the investigation and is either contained in the statewide automated child welfare information system established by the Ohio Department of Job and Family Services pursuant to R.C. 5101.13 or taken or maintained by the public children services agency as part of its “assessment/investigation and ... provision of social services to families and children.”



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OPINION NO. 2017-019

Cynthia C. Dungey, Director
Ohio Department of Job and Family Services
30 East Broad Street
Columbus, Ohio 43215

Dear Director Dungey:

You have requested an opinion whether a county public children services agency (“PCSA”) may furnish to a local law enforcement agency a photograph of a child in the custody of the PCSA that is or may be missing.¹ R.C. 5153.16(A)(23) requires a PCSA to “[f]ile a missing child report with a local law enforcement agency upon becoming aware that a child in the custody of the [PCSA] is or may be missing.” The confidentiality of information and records generated or possessed by a PCSA in the course of its provision of children services is thoroughly protected by various federal and state laws and regulations. Accordingly, you ask whether a PCSA may furnish to a local law enforcement agency a photograph of a missing child when filing a missing child report pursuant to R.C. 5153.16(A)(23).

Each county in the state of Ohio is required to have a PCSA that “assume[s] the powers and duties of the children services function ... for a county.”² R.C. 5153.01(A); *see also* R.C. 5153.02. The provisions in R.C. Chapter 5153 confer upon a PCSA numerous, varied duties and responsibilities related to the provision of public or protective services for children. 2016 Op. Att’y Gen. No. 2016-027, at 2-311. A PCSA shall, among other things, investigate child abuse allegations, R.C. 5153.16(A)(1), accept custody of children committed to the PCSA by a court exercising juvenile jurisdiction, R.C. 5153.16(A)(3), provide specified social services, R.C. 5153.16(A)(4), (5), acquire and operate a county children’s home, R.C. 5153.16(A)(10), and

¹ A public children services agency (PCSA) may obtain temporary or permanent custody of a child pursuant to agreements, R.C. 5103.15, or through court processes, R.C. 2151.353(A)(2) (if a child is adjudicated an abused, neglected, or dependent child, the juvenile court may commit the child to the temporary custody of a PCSA for placement in a foster home). *See also* R.C. 5153.16(A)(3) (a public children services agency shall accept custody of children committed to the agency by a court exercising juvenile jurisdiction).

² A PCSA may be a county children services board, a county department of job and family services, or an entity designated under R.C. 307.981. R.C. 5153.02(A)-(C).

administer federal funds provided for county children services, R.C. 5153.16(A)(14), (A)(20).³ A PCSA also is required to prepare and maintain a case plan for any child of which it has temporary or permanent custody, R.C. 2151.412(A)(2), and to enter into the uniform statewide automated child welfare information system (“SACWIS”)⁴ any information related to children and families that state or federal law requires a PCSA to maintain, 13 Ohio Admin. Code 5101:2-33-23(A) (2016-2017 Supplement). *See also* R.C. 5101.13(A) (SACWIS shall contain records regarding (1) “[i]nvestigations of children and families, and children’s care in out-of-home care, in accordance with [R.C. 2151.421] and [R.C. 5153.16],” (2) “[c]are and treatment provided to children and families,” and (3) “[a]ny other information related to children and families that state or federal law, regulation, or rule requires the [department of job and family services] or a [PCSA] to maintain”).

Generally, information and records prepared or maintained by a PCSA are confidential.⁵ *See, e.g.*, R.C. 2151.421(I)(1) (reports of child abuse or neglect made to a PCSA under this section are confidential, subject to certain exceptions); R.C. 5101.131 (information contained in SACWIS is confidential); R.C. 5153.17 (written records prepared and kept by a PCSA are confidential); 13 Ohio Admin. Code 5101:2-33-21(A) (2016-2017 Supplement) (“[e]ach referral, assessment/investigation and provision of services related to reports of child abuse, neglect, dependency, or family in need of services ... is confidential. Information contained in

³ R.C. 5153.16(A)(14) requires a PCSA to “[a]dminister funds provided under Title IV-E of the ‘Social Security Act,’ 94 Stat. 501 (1980), 42 U.S.C.A. 671, as amended, in accordance with rules adopted under [R.C. 5101.141].” Title IV-E authorizes federal reimbursement for a portion of the state’s cost of providing foster care and adoption assistance programs. *See Weaver v. Ohio Dep’t of Job & Family Servs.*, 153 Ohio App. 3d 331, 794 N.E.2d 92, 2003-Ohio-3827, at ¶4 (“[t]he Title IV-E Adoption Assistance Program set forth in Section 670 et seq., Title 42, U.S. Code, provides financial support for children who are adopted and have special needs”); 1987 Op. Att’y Gen. No. 87-105, at 2-700 (recognizing that Title IV-E authorizes federal reimbursement for a portion of the state’s cost of providing foster care). R.C. 5153.16(A)(20) requires a PCSA to administer “a Title IV-A program identified under [R.C. 5101.80(A)(4)(c) or (g) that the department of job and family services provides for the [PCSA] to administer under the department’s supervision pursuant to [R.C. 5101.801].”

⁴ The uniform statewide automated child welfare information system (“SACWIS”) is established by the Ohio Department of Job and Family Services (“ODJFS”) pursuant to R.C. 5101.13.

⁵ Confidential records prepared or maintained by a PCSA are not subject to inspection and copying under the public records law. *See* R.C. 149.43(A)(v) (“public record” does not include records the release of which are prohibited by state or federal law). Also, information contained in SACWIS is not subject to disclosure pursuant to R.C. 1347.08, which governs the confidentiality and disclosure of information contained in personal information systems. R.C. 1347.08(F)(10) (recognizing that R.C. 1347.08 does not apply to records contained in SACWIS).

[SACWIS] is confidential pursuant to [R.C. 5101.131]”); 5101:2-33-23(B) (2016-2017 Supplement) (“[a]ll case records prepared, maintained, and permanently kept by the PCSA are confidential”); 5101:2-33-70 (2016-2017 Supplement) (information in SACWIS is confidential); *see also* 42 U.S.C.A. § 671(a)(8) (Thomson Reuters 2017) (to be eligible for federal assistance for foster care and adoption assistance programs, a state is required to have a plan that “provides safeguards which restrict the use of or disclosure of information concerning individuals assisted [under such a plan]”); § 671(a)(20)(B)(iii) (Thomson Reuters 2017) (to be eligible for federal assistance for state foster care and adoption assistance programs, a state is required to have a plan that “ha[s] in place safeguards to prevent the unauthorized disclosure of information in any child abuse and neglect registry maintained by the State, and to prevent any such information obtained” for purposes of criminal records checks for any prospective foster or adoptive parent “from being used for a purpose other than the conducting of background checks in foster or adoptive placement cases”); § 5106a(b)(2)(B)(viii) (Thomson Reuters 2012) (the governor of a state that receives federal grants for child abuse or neglect prevention and treatment programs must provide assurances that the state has a law that preserves the confidentiality of records in order to protect the rights of the child and the child’s parents or guardians); 45 C.F.R. § 205.50(a)(1)(i)(A)-(G) (2016) (a state plan for financial assistance under Titles IV-A, IV-E, and IV-B of the Social Security Act must provide that the use or disclosure of information concerning applicants and recipients will be limited to only specific purposes);⁶ 45 C.F.R. § 1355.21(a) (2015) (requiring state plans for federal financial assistance under Titles IV-E and IV-B of the Social Security Act to provide for safeguards on the use and disclosure of information which meet the requirements contained in 42 U.S.C.A. § 671(a)(8)).

A PCSA may disclose confidential information and records in specified limited circumstances. The authority of a PCSA to disclose confidential information and records is set forth in rule 5101:2-33-21. *See* rule 5101:2-33-23(B) (“[a]ccess to PCSA case records and the release of PCSA case record information shall be conducted pursuant to and in accordance with the requirements outlined in rule 5101:2-33-21 of the Administrative Code”); rule 5101:2-33-70(C) (“[t]he data in SACWIS is confidential and release of any child welfare information shall be pursuant to rule 5101:2-33-21 of the Administrative Code”); rule 5101:2-36-12(A) (“[t]he provisions of rule 5101:2-33-21 of the Administrative Code regarding confidentiality apply to all cross-referrals of child abuse and/or neglect required by this rule”); rule 5101:2-36-13(D)(4) (authorizing a PCSA to release certain confidential information to a children’s services agency in another state pursuant to rule 5101:2-33-21); rule 5101:2-42-90(C)(3) (authorizing a PCSA to provide a child’s prior history of maltreatment with caregivers receiving a child in a substitute or respite care setting pursuant to rule 5101:2-33-21).

⁶ On its face, 45 C.F.R. § 205.50(a) only regulates state plans for financial assistance under Title IV-A of the Social Security Act. However, 45 C.F.R. § 1355.30(p)(3) applies 45 C.F.R. § 205.50 to state plans for assistance under Titles IV-E and IV-B of the Social Security Act. *See also* 45 C.F.R. § 1355.21(b) (requiring plans for assistance under Titles IV-E and IV-B to provide for compliance with the regulations applicable to a state as listed in 45 C.F.R. § 1355.50).

Division (G)(1) of rule 5101:2-33-21 states that a PCSA “shall promptly disseminate all information determined to be relevant”⁷ to any federal, state, or local “[l]aw enforcement officials” investigating “a report of a missing child.” The word “shall” imposes a mandatory duty upon a PCSA to disseminate the information described in rule 5101:2-33-21(G)(1). *See Dep’t of Liquor Control v. Sons of Italy Lodge 0917*, 65 Ohio St. 3d 532, 534, 605 N.E.2d 368 (1992) (“[i]t is axiomatic that when it is used in a statute, the word ‘shall’ denotes that compliance with the commands of that statute is *mandatory*” (emphasis in original)). Therefore, pursuant to rule 5101:2-33-21(G)(1), a PCSA is required to furnish a photograph of a missing child to a local law enforcement agency investigating a report of a missing child if the photograph is “information determined to be relevant,” as that phrase is used in rule 5101:2-33-21(G).

Rule 5101:2-33-21 governs the confidentiality and dissemination of “[i]nformation contained in [SACWIS],” rule 5101:2-33-21(A); *see also* rule 5101:2-33-70(C), as well as “PCSA case records and ... PCSA case record information,” rule 5101:2-33-23(B). Thus, when rule 5101:2-33-21 authorizes the dissemination of “information,” the term “information” includes information contained in SACWIS, PCSA case records, and PCSA case record information. “Case record,” as used in rule 5101:2-33-23, means “the permanent documentation of the assessment/investigation and the provision of social services to families and children maintained as hard copy files, electronic files, or as a combination of both.” 13 Ohio Admin. Code 5101:2-1-01(B)(44) (2016-2017 Supplement). Various administrative regulations require a PCSA to take and maintain photographs of children in its custody as part of a PCSA’s “assessment/investigation and ... provision of social services to families and children.” *See, e.g.*, 13 Ohio Admin. Code 5101:2-5-10(A)-(B) (2016-2017 Supplement) (requiring an agency that provides “twenty-four hour out-of-home care for a child” to “maintain a case record of each child” which includes maintaining “an annually updated color photograph” of the child at a central office location);⁸ 5101:2-36-03(R)(1) (2016-2017 Supplement) (requiring a PCSA to take any other actions necessary to assess safety and risk to a child in conducting an intra-familial child abuse and/or neglect assessment/investigation in response to a child abuse and/or neglect report, including, but not limited to, taking photographs of areas of trauma on the child’s body); 5101:2-42-67(A)(8) (2016-2017 Supplement) (requiring a PCSA to prepare a lifebook for a child in substitute care that includes photos and other information). A photograph of a child in the custody of a PCSA also may be contained in SACWIS. *See* R.C. 5101.13(A)(1)-(3) (SACWIS

⁷ Rule 5101:2-33-21(G)(1) requires a PCSA to disseminate information determined to be relevant, with the exception of the information described in rule 5101:2-33-21(E). Rule 5101:2-33-21(E) prohibits a PCSA from releasing “the identities of the referent/reporter, and any person providing information during the course of an assessment/investigation ... to any party without the written consent of the individual(s) involved, except to those individuals outlined in paragraph (F) of [rule 5101:2-33-21].”

⁸ Division (B)(11) of 13 Ohio Admin. Code 5101:2-1-01 defines “[a]gency” for the purpose of 13 Ohio Admin. Code Chapter 5101:2-5 to include a PCSA.

contains records regarding “[i]nvestigations of children and families, and children’s care in out-of-home care, in accordance with [R.C. 2151.421] and [R.C. 5153.16],” “[c]are and treatment provided to children and families,” and “[a]ny other information related to children and families that state or federal law, regulation, or rule requires [the department of job and family services] or a [PCSA] to maintain”); rule 5101:2-33-23(A) (“[t]he [PCSA] shall record case information in [SACWIS]. Case information that cannot be recorded in SACWIS shall be maintained as hard copy files, electronic files or as a combination of both”). Therefore, a photograph of a child in the custody of a PCSA that is taken or maintained by the PCSA as part of its “assessment/investigation and ... provision of social services to families and children” or that is contained in SACWIS is included within the meaning of “information,” as that term is used in rule 5101:2-33-21(G).⁹

That the term “information,” as used in rule 5101:2-33-21(G)(1), includes a photograph of a child about whom a missing child report has been filed finds support in the definition of “information” in R.C. 2901.30(A)(1). R.C. 2901.30 addresses the responsibilities of a law enforcement agency in receiving and investigating a missing child report. Pursuant to R.C. 2901.30(E), a PCSA is required, “[u]pon request from a law enforcement agency,” to “grant the law enforcement agency access to all information concerning a missing child that the agency possesses that may be relevant to the law enforcement agency in investigating a missing child report concerning that child.” R.C. 2901.30(A)(1) defines the term “information” to mean “information that can be integrated into the computer system and that relates to the physical or

⁹ The provisions in 13 Ohio Admin. Code 5101:2-33-21 regarding the dissemination of PCSA case records and information and information contained in SACWIS implement federal and state laws and regulations that govern the confidentiality of information and records prepared or maintained by a PCSA. *See, e.g.*, 42 U.S.C.A. § 671(a)(8), (a)(9) (Thomson Reuters 2017) (to be eligible for federal assistance for state foster care and adoption assistance programs, a state is required to have a plan that authorizes the disclosure of information to appropriate authorities with respect to a child that is at risk of being a sex trafficking victim as a result of running away from foster care); § 671(a)(35)(A)(i), (a)(35)(B) (Thomson Reuters 2017) (a state that receives federal assistance for state foster care and adoption assistance programs shall implement protocols for “expeditiously locating any child missing from foster care” and to report information on missing children to “law enforcement authorities for entry into the National Crime Information Center (NCIC) database of the Federal Bureau of Investigation”); 45 C.F.R. § 205.50(a)(1)(i)(G) (2016) (a state plan for financial assistance under Title IV-A of the Social Security Act must provide that dissemination of information concerning applicants and recipients will be limited to “[t]he reporting to the appropriate agency or official of information on known or suspected instances of physical or mental injury, sexual abuse or exploitation, or negligent treatment or maltreatment of a child receiving aid under circumstances which indicate that the child’s health or welfare is threatened”); R.C. 5101.132(A)(2) (a person may access information from SACWIS in a manner and to the extent authorized by rules adopted by ODJFS); R.C. 5101.134(C) (a PCSA shall implement and use information in SACWIS in accordance with rules adopted by ODJFS).

mental description of a minor ... and other information that could assist in identifying a minor including, but not limited to, ... photographs.”

Accordingly, based upon the foregoing, we conclude that a PCSA that files a missing child report pursuant to R.C. 5153.16(A)(23) has a mandatory duty under 13 Ohio Admin. Code 5101:2-33-21(G)(1) to furnish a photograph of the missing child to the local law enforcement agency responsible for investigating the report when the photograph is determined to be relevant to the investigation¹⁰ and is either contained in the statewide automated child welfare information system established by the Ohio Department of Job and Family Services pursuant to R.C. 5101.13 or taken or maintained by the PCSA as part of its “assessment/investigation and ... provision of social services to families and children.”¹¹

Conclusion

Based on the foregoing, it is my opinion, and you are hereby advised that a county public children services agency that files a missing child report pursuant to R.C. 5153.16(A)(23) has a mandatory duty under 13 Ohio Admin. Code 5101:2-33-21(G)(1) (2016-2017 Supplement) to furnish a photograph of the missing child to the local law enforcement agency responsible for investigating the report when the photograph is determined to be relevant to the investigation and is either contained in the statewide automated child welfare information system established by the Ohio Department of Job and Family Services pursuant to R.C. 5101.13 or taken or

¹⁰ We are unable to imagine a circumstance in which a photograph of a missing child would not be relevant to an investigation regarding the missing child. Nevertheless, factual determinations cannot be made by an opinion of the Attorney General. *See generally* 2009 Op. Att’y Gen. No. 2009-002, at 2-12 (“a question of fact ... cannot be resolved by means of an opinion of the Attorney General”). Thus, it remains the responsibility of local authorities to determine whether a photograph of a missing child is relevant to an investigation regarding that missing child.

¹¹ Even if a PCSA were not required under rule 5101:2-33-21(G)(1) to furnish a photograph of a missing child to a local law enforcement agency investigating a missing child report filed by the PCSA pursuant to R.C. 5153.16(A)(23), rule 5101:2-33-21(H)(1)-(3) authorize a PCSA to disclose “all information it determines to be relevant to an individual or agency, with written authorization from the PCSA director, when it is believed to be in the best interest of,” among others, a child that is the subject of a report possessed by the PCSA, an alleged child victim, a child who is an alleged perpetrator, or “[a]ny child residing within, or participating in an activity conducted by an out-of-home care setting when necessary to protect children in that setting.”

Cynthia C. Dungey, Director

- 7 -

maintained by the public children services agency as part of its “assessment/investigation and ... provision of social services to families and children.”

Very respectfully yours,

A handwritten signature in blue ink that reads "Michael Dewine". The signature is written in a cursive, flowing style.

MICHAEL DEWINE
Ohio Attorney General