OPINION NO. 99-006

Syllabus:

1. When a run sheet is created and maintained by a county emergency medical services (EMS) organization, all information on the run sheet that does not satisfy either the medical records exception, R.C. 149.43(A)(1)(a), or the exception for "records the release of which is prohibited by state or federal law," R.C. 149.43(A)(1)(p), is a public record and must be disclosed pursuant to R.C.149.43(B).

2. Information on a run sheet that satisfies the medical records exception of R.C. 149.43(A)(1)(a), but that is not also subject to the exception of R.C. 149.43(A)(1)(p), may be released to the public in response to a public records request, but a county EMS organization is under no obligation to do so.

3. Pursuant to R.C. 3701.243(A), a county EMS organization responding to a public records request for run sheets is prohibited from disclosing "(1) [t]he identity of any individual on whom an HIV test is performed; (2) [t]he results of an HIV test in a form that identifies the individual tested; [and] (3) [t]he identity of any individual diagnosed as having AIDS or an AIDS-related condition." Pursuant to R.C. 3701.243(A) and R.C. 149.43(A)(1)(p), this information is not a public record and must be redacted from a run sheet prior to its disclosure pursuant to R.C. 149.43(B).

4. Pursuant to the federal constitutional right of privacy, a county EMS organization responding to a public records request for run sheets is

prohibited from disclosing an individual's social security number or any information that identifies an individual as having a stigmatizing medical condition. Pursuant to the federal constitutional right of privacy and R.C. 19.43(A)(1)(p), this information is not a public record and must be redacted from a run sheet prior to its disclosure pursuant to R.C.149.43(B).

To: W. Duncan Whitney, Delaware County Prosecuting Attorney, Delaware, Ohio
By: Betty D. Montgomery, Attorney General, February 1, 1999

You have requested an opinion regarding the application of the Ohio public records act, R.C. 149.43. Specifically, you ask:

1. To what extent is a run sheet that is created and maintained by a county emergency medical services (EMS) organization a public record subject to mandatory disclosure pursuant to R.C. 149.43(B)?

2. If not a public record, what information, if any, on a run sheet may be released to the public pursuant to a request for information?

Based on your letter and information provided by a member of your staff, we understand a run sheet to be a document that is completed by the county emergency medical services team whenever it is dispatched on a call. The run sheet contains information such as the patient's name, address, age, location of the incident, nature and time of the call, and disposition of the patient. The run sheet is prepared for and maintained by the EMS organization for its own purposes, and not for the use of the receiving hospital or the patient's physician.

Pursuant to R.C. 149.43(B), a public office is required to disclose, upon request, all information that qualifies as a public record, subject only to the specific exceptions set out in R.C. 149.43(A)(1). *See generally State ex rel. James v. Ohio State Univ.*, 70 Ohio St. 3d 168, 637 N.E.2d 911 (1994); *Dayton Newspapers, Inc. v. City of Dayton*, 45 Ohio St. 2d 107, 108, 341 N.E.2d 2d 576, 578 (1976). A "[p]ublic record" is defined as "any record that is kept by any public office, including ... county" offices, except for the sixteen specific types of records listed thereafter. R.C. 149.43(A)(1).

The term "[p]ublic office" is further defined as "any ... 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." R.C. 149.011(A). Pursuant to R.C. 307.05, a board of county commissioners may operate a county EMS organization directly or contract for emergency medical services with another governmental or private entity. The provision of emergency medical services is generally recognized as a governmental function. *See, e.g.*, R.C. 2744.01(C)(2)(a) (classifying emergency medical services as a governmental function for purposes of political subdivision tort liability). Thus, a county EMS organization is a public office, as defined in R.C. 149.011(A). *See State ex rel. Freedom Communications, Inc. v. Elida Community Fire Co.*, 82 Ohio St. 3d 578, 579, 697 N.E.2d 210, 213 (1998) (holding that a nonprofit entity that provides fire and emergency medical services to a township by contract is a public office as defined at R.C. 149.011(A)).

"Records" are "any document, device, or item ... created or received by ... 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."

R.C. 149.011(G). Run sheets, as you have described them, serve to document the functions, procedures, or operations of the county EMS organization, thus qualifying as "records" under R.C. 149.011(G). Accordingly, run sheets created and maintained by a county EMS organization are records kept by a public office for purposes of R.C. 149.43(A)(1). Therefore, the run sheets must be disclosed to the public unless they are subject to one or more of the exceptions set out in R.C. 149.43(A)(1)(a)-(p).[1]

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[1] R.C. 149.43(A)(1), in its entirety, states as follows:

(A) As used in this section:

(1) "Public record" means any record that is kept by any public office, including, but not limited to, state, county, city, village, township, and school district units, 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 and division (C) of section 2919.121 of the Revised Code and to appeals of actions arising under those sections;

(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;

It is well established that "R.C. 149.43 must be liberally construed in favor of broad access." *State ex rel. Wadd v. City of Cleveland*, 81 Ohio St. 3d 50, 51, 689 N.E.2d 25, 27 (1998); *accord State ex rel. Warren Newspapers, Inc. v. Hutson*, 70 Ohio St. 3d 619, 621, 640 N.E.2d 174, 177 (1994). The exceptions listed in R.C. 149.43(A)(1)(a)-(p) are to be construed narrowly with any doubts resolved in favor of disclosure. *See, e.g., State ex rel. Gannett Satellite Network, Inc. v. Petro*, 80 Ohio St. 3d 261, 264, 685 N.E.2d 1223, 1227 (1997); *State ex rel. Beacon Journal Publ'g Co. v. University of Akron*, 64 Ohio St. 2d 392, 397, 415 N.E.2d 310, 314 (1980). If a record contains both excepted and non-excepted information, the excepted information "must be redacted and any remaining information must be released." *State ex rel. Master v. City of Cleveland*, 75 Ohio St. 3d 23, 31, 661 N.E.2d 180, 187 (1996). Thus, to determine what information must be released, one must analyze the various exceptions to the definition of public record listed at R.C. 149.43(A)(1)(a)-(p). The information that remains after redacting excepted material is a public record and must be released pursuant to R.C. 149.43(B).

With these principles in mind, we turn now to your first question, which requires an analysis of what information on a run sheet is a public record that must be released pursuant to R.C. 149.43(B). Of the exceptions to the definition of public record in R.C. 149.43(A)(1), the two that are pertinent to your request are the exception for "[r]ecords the release of which is prohibited by state or federal law," R.C. 149.43(A)(1)(p), and the exception for medical records, R.C. 149.43(A)(1)(a). Any information on a run sheet that satisfies the requirements of either of these exceptions is not a public record and may be withheld in response to a public records request. Any remaining information on the run sheet is a public record and must be disclosed.

For ease of discussion, we begin with R.C. 149.43(A)(1)(p), the so-called "catch-all" exception. This exception requires a review of various provisions of state and federal law pertinent to the types of information that typically appear on a run sheet. There are two state law provisions that apply specifically to emergency medical services information. Neither of these, however, prohibits the disclosure of public record information on a run sheet.

The first, R.C. 4765.06, requires the State Board of Emergency Medical Services to "maintain the confidentiality of any information collected under this section[2] that would identify a specific patient of emergency medical services ...*except as otherwise provided in [R.C.] 149.43.*" (Emphasis and footnote added.) As this statute applies only to the State Board of Emergency Medical Services, it imposes no duty of confidentiality on local EMS organizations or their personnel. Even if the duty could be extended by implication, however, R.C. 4765.06 expressly incorporates the disclosure requirements of R.C. 149.43, which means the statute does not prohibit the disclosure of any information that constitutes a "public record."

(m) Intellectual property records;

(n) Donor profile records;

(o) Records maintained by the department of human services pursuant to section 5101.312 of the Revised Code;

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

[2] The State Board of Emergency Medical Services may require EMS organizations to submit information for purposes of maintaining statutorily-required data bases. *See* R.C. 4765.06; 1996 Op. Att'y Gen. No. 96-005.

Thus, R.C. 4765.06 is not a state law that prohibits the release of information on a run sheet for purposes of the "catch-all" exception.

A similar analysis applies to the confidentiality requirements imposed upon emergency medical technicians (EMTs) by administrative rule. 11 Ohio Admin. Code 4765-9-01 provides, in part, that:

> (J) *Except as otherwise required by law,* an EMT shall maintain the confidentiality of patient information.
>
> (K) An EMT shall not release or provide a medical report or any supporting documentation, or otherwise disclose the contents of a medical report to anyone *other than those authorized by law to receive them.* (Emphasis added.)

The duty to maintain confidentiality under this rule is limited to EMTs. It does not extend to other emergency medical services personnel or the EMS organization itself. Further, this rule does not prohibit any disclosure that is required or authorized "by law." Therefore, by its plain language, the rule requires compliance with the mandatory disclosure provisions of R.C. 149.43(B).[3] Accordingly, neither R.C. 4765.06 nor rule 4765-9-01 prohibits the disclosure of information on a run sheet for purposes of the "catch-all" exception of R.C. 149.43(A)(1)(p).

In contrast, R.C. 3701.243 does constitute a provision of state law that prohibits the disclosure of certain information that could appear on a run sheet. R.C. 3701.243(A) states:

> *Except as provided in this section or section 3701.248* of the Revised Code, no person or agency of state or local government that acquires the information while providing any health care service or while in the employ of a health care facility or health care provider shall disclose or compel another to disclose any of the following:
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> (1) The identity of any individual on whom an HIV test is performed;
>
> (2) The results of an HIV test in a form that identifies the individual tested;
>
> (3) The identity of any individual diagnosed as having AIDS or an AIDS-related condition. (Emphasis added.)

R.C. 3701.243(A) thus prohibits the disclosure of the identity of an individual in connection with specified HIV, AIDS, and AIDS-related information. The only exceptions to this prohibition are set out in R.C. 3701.243(B)-(F) and R.C. 3701.248. None of these provisions, however, incorporates the disclosure requirements of R.C. 149.43(B) or otherwise authorizes disclosure to the general public. R.C. 3701.243(A), thus, removes certain

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[3] Absent express statutory authority, a state agency may not promulgate a rule which purports to exempt information from the operation of the public records act, R.C. 149.43. *See State ex rel. Lindsay v. Dwyer,* 108 Ohio App. 3d 462, 466-67, 670 N.E.2d 1375, 1378 (Franklin County 1996); *accord State ex rel. Gallon & Takacs Co., L.P.A. v. Conrad,* No. 97APD02-243, 1997 Ohio App. LEXIS 5413 (Ct. App. Franklin County Dec. 4, 1997), *appeal dismissed,* 81 Ohio St. 3d 1504, 691 N.E.2d 1063 (1998). The State Board of Emergency Medical Services has no such statutory authority.

HIV, AIDS, and AIDS-related information from the mandatory disclosure provisions of R.C. 149.43(B). Consequently, if a run sheet contains any of the information described in R.C. 3701.243(A), and that information was acquired by persons providing emergency medical services or in the employ of the county EMS organization, the county EMS organization must redact all patient-identifying information from the run sheet before releasing the run sheet. *See also* 1997 Op. Att'y Gen. No. 97-010 at 2-61 through 2-62 (concluding that the federal constitutional right of privacy prohibits disclosure of information indicating that an individual has been diagnosed as having HIV, AIDS, or an AIDS-related condition and that, under proper factual circumstances, additional restrictions may be imposed under the Americans with Disabilities Act, 42 U.S.C. 12101-12213 (1994 & Supp. II 1996)).

The physician-patient testimonial privilege, R.C. 2317.02(B)(1), is another provision of state law that prohibits the release of certain information for purposes of the "catch-all" exception. *See* 1996 Op. Att'y Gen. No. 96-005 at 2-22; *cf. State ex rel. Nix v. City of Cleveland*, 83 Ohio St. 3d 379, 383, 700 N.E.2d 12, 16 (1998) (recognizing the attorney-client privilege, R.C. 2317.02(A), as a state law prohibiting the release of records (citing *TBC Westlake, Inc. v. Hamilton County Bd. of Revision*, 81 Ohio St. 3d 58, 62-63, 689 N.E.2d 32, 36 (1998) and *State ex rel. Thomas v. Ohio State Univ.*, 71 Ohio St. 3d 245, 249, 643 N.E.2d 126, 130 (1994)). Pursuant to R.C. 2317.02(B)(1), the physician-patient testimonial privilege protects from disclosure, "a communication *made* [to] *the physician or dentist* by a the [*sic*] physician's or dentist's patient in that relation, or the physician's or dentist's advice to the a [*sic*] patient." (Emphasis added.)

Emergency medical services are provided by emergency medical technicians, first responders, or paramedics. *See* R.C. 4765.01(G). The physician-patient testimonial privilege does not extend to information observed and recorded by such ancillary medical personnel unless that information is intended to assist a physician in diagnosis or treatment. *See* R.C. 2317.02(B)(4)(a) (defining "communication"); *Johnston v. Miami Valley Hosp.*, 61 Ohio App. 3d 81, 84-85, 572 N.E.2d 169, 171 (Montgomery County 1989); *accord State v. Wells*, No. C-940307, 1994 Ohio App. LEXIS 5721 (Ct. App. Hamilton County Dec. 21, 1994); *State v. Cherukuri*, 79 Ohio App. 3d 228, 231-32, 607 N.E.2d 56, 60 (Lake County 1992); *State v. Gabriel*, 72 Ohio App. 3d 825, 829-30, 596 N.E.2d 538, 540-41 (Franklin County 1991). Thus, the question of whether the physician-patient testimonial privilege applies to any information in a run sheet will depend on the facts of each situation. You have informed us that in your situation the run sheets are not prepared or maintained for the purpose of assisting a physician in treatment. Accordingly, none of the information on the run sheets you have described is subject to the physician-patient testimonial privilege.

For purposes of the "catch-all" exception, the federal constitutional right of privacy has also been interpreted to prohibit the release of information under certain circumstances. The Ohio Supreme Court has recognized that the "right of privacy involves the interest of avoiding disclosure of personal matters." *State ex rel. Plain Dealer Publ'g Co. v. City of Cleveland*, 75 Ohio St. 3d 31, 34, 661 N.E.2d 187, 190 (1996) (citing *Whalen v. Roe*, 429 U.S. 589, 598-600 (1977)); *accord State ex rel. Beacon Journal Publ'g Co. v. City of Akron*, 70 Ohio St. 3d 605, 607, 640 N.E.2d 164, 166 (1994); *see also Kallstrom v. City of Columbus*, 136 F.3d 1055, 1061 (6th Cir. 1998). Not every disclosure of personal matters, however, rises to the level of a constitutionally protected privacy interest.

Ohio courts and the federal courts of the Sixth Circuit have interpreted the right of privacy in personal information narrowly, utilizing a two-part test to determine when personal information is constitutionally protected from disclosure. *See, e.g., State ex rel. Thomas*, 71 Ohio St. 3d at 249, 643 N.E.2d at 120 (advising that concerns over possible ill-effects of

disclosure should be addressed by legislation "rather than [by] resolving the matter through judicial expansion of the constitutional right of privacy"); *Kallstrom*, 136 F.3d at 1061-62; *J.P. v. DeSanti*, 653 F.2d 1080, 1088-91 (6th Cir. 1981). First, the information must be subject to a legitimate expectation of privacy. *See State ex rel. Beacon Journal Publ'g Co. v. City of Akron*, 70 Ohio St. at 608, 640 N.E.2d at 167 (citing *Nixon v. Administrator of Gen. Services*, 433 U.S. 425 (1977)). Second, in order for a legitimate privacy interest to be "of constitutional dimension," it must implicate a fundamental right of the individual. *Kallstrom*, 136 F.3d at 1061-62 (citing *DeSanti*, 653 F.2d at 1091). Thus, constitutional protection against disclosure of personal information is provided only in situations where disclosure would create a "high potential for victimization," based on evidence of fraud, harassment, or threats to personal safety resulting from similar disclosures. *State ex rel. Freedom Communications, Inc.*, 82 Ohio St. 3d at 581, 697 N.E.2d at 214; *accord Kallstrom*, 136 F.3d at 1061-62; *State ex rel. Plain Dealer Publ'g Co.*, 75 Ohio St. 3d at 34-35, 661 N.E.2d at 190; *State ex rel. Thomas*, 71 Ohio St. 3d at 248, 643 N.E.2d at 129; *State ex rel. Beacon Journal Publ'g Co. v. City of Akron*, 70 Ohio St. 3d at 612, 640 N.E.2d at 169.

Applying the two-part analysis of the federal constitutional right of privacy to run sheets, it is arguable that a person has a legitimate expectation of privacy in the personal medical information contained in a run sheet. As with social security numbers, there are legislative schemes that govern the use of personal medical information in many circumstances. There are statutory restrictions regarding the disclosure of certain information regarding Medicaid recipients, 42 U.S.C. 1396a(a)(7) (1994); 42 C.F.R. & § 167; 431.301-.306 (1997); [1998-1999 Ohio Monthly Record, vol. 1] Ohio Admin. Code 5101:1-1-03 at 914-16, the disclosure of nursing home patient records, 42 U.S.C. 1396r(c)(1)(A)(iv) (1994); R.C. 3721.13(A)(10), the disclosure of medical information in the hands of the state retirement systems, R.C. 145.27(C); R.C. 742.41(C); R.C. 3307.21(C); R.C. 3309.22(C); R.C. 5505.04(D)(2), the disclosure of medical information held by or obtained from insurance companies, R.C. 1751.19(C); R.C. 1751.52(B); R.C. 3904.13, and the disclosure of patient records belonging to various types of care and treatment facilities, R.C. 3724.07(B)(5) (community alternative homes); R.C. 3793.14 (alcohol and drug addiction services); R.C. 4723.35(E) (alternative programs for chemically dependent nurses); R.C. 5122.31(N) (persons hospitalized or sought to be hospitalized for mental illnesses); R.C. 5123.62(T) (rights of mentally retarded and developmentally disabled persons). *See also* R.C. 2317.02(B)(1) (physician-patient testimonial privilege). Although these statutes do not directly apply to emergency medical services personnel, they serve to create a legitimate expectation of privacy in one's medical information. *Cf. State ex rel. Beacon Journal Publ'g Co. v. City of Akron*, 70 Ohio St. 3d at 609, 640 N.E.2d at 169 (finding that the federal legislative scheme governing use of social security numbers creates an expectation of privacy).

Nonetheless, when the second prong of the right to privacy test is applied, it appears that in most circumstances the privacy interest in personal medical information created by the foregoing legislative schemes does not rise to constitutional dimensions. Using the "high potential for victimization" standard, Ohio courts have extended the constitutional right to privacy only to prevent the disclosure of social security numbers, *State ex rel. Beacon Journal Publ'g Co. v. City of Akron*, 70 Ohio St. 3d at 612, 640 N.E.2d at 169, and information revealing that an individual has a stigmatizing disease, *Humphry v. Riverside Methodist Hosp.*, 22 Ohio St. 3d 94, 96, 488 N.E.2d 877, 879 (1986) (Legionnaires' disease), *overruled on other grounds by State ex rel. Steckman v. Jackson*, 70 Ohio St. 3d 420, 639 N.E.2d 83 (1994) (syllabus, paragraph seven); *Arnold v. American Nat'l Red Cross*, 93 Ohio App. 3d 564, 578-81, 639 N.E.2d 484, 493-95 (Cuyahoga County 1994) (identity of blood donor who had

AIDS). *See also Kallstrom*, 136 F.3d at 1062 (finding that the release of names, addresses, and phone numbers of undercover police and their families created a risk to personal safety, and that officers had a constitutional right to notice and hearing before disclosure); *cf. State ex rel. Freedom Communications, Inc.*, 82 Ohio St. 3d at 581-82, 697 N.E.2d at 214 (finding no constitutional prohibition against disclosure of investigative report and termination letters resulting from allegations of sexual misconduct of firefighters during training); *State ex rel. Plain Dealer Publ'g Co.*, 75 Ohio St. 3d at 37, 661 N.E.2d at 190-91 (finding no constitutional prohibition against disclosure of resumes of applicants for police chief vacancy); *State ex rel. Thomas*, 71 Ohio St. 3d at 248-49, 643 N.E.2d at 129-30 (finding no constitutional protection for names and work addresses of university animal research scientists). With the exception of social security numbers or stigmatizing medical conditions, it is unlikely that information on a run sheet, if disclosed to the public, will create any potential for victimization through fraud, harassment, or threats to personal safety. Accordingly, pursuant to the federal constitutional right of privacy, a county EMS organization must redact only social security numbers, and information that would disclose that a patient has a stigmatizing medical condition, such as AIDS or Legionnaires' disease.

As a final point in reviewing applicable provisions of state or federal law, we note that the provisions of R.C. Chapter 1347 do not prohibit disclosure of records for purposes of the "catch-all" exception of R.C. 149.43(A)(1)(p). 1990 Op. Att'y Gen. No. 90-007 (syllabus, paragraph three). R.C. Chapter 1347 governs the collection and maintenance by state and local agencies of personal information in personal information systems.[4] A state or local agency may collect, maintain, and use personal information in such systems only "as necessary and relevant" to functions of the agency. R.C. 1347.05(H); *see also* R.C. 1347.07. In some instances, a person may recover damages for improper use or disclosure of personal information. R.C. 1347.10. *See generally* 1992 Op. Att'y Gen. No. 92-007 at 2-303. R.C. 1347.04(B) expressly provides, however, that "disclosure to members of the general public of personal information contained in a public record, as defined in [R.C.] 149.43, is not an improper use of personal information under this chapter," and also that "the provisions of [R.C. Chapter 1347] shall not be construed to prohibit the release of public records, or the disclosure of personal information in public records, as defined in [R.C.] 149.43." *See also* 149.43(D) (providing that R.C. Chapter 1347 "does not limit the provisions of this section"); *Henneman v. City of Toledo*, 35 Ohio St. 3d 241, 245, 520 N.E.2d 207, 211 (1988); 1992 Op. Att'y Gen. No. 92-071 at 2-303; 1990 Op. Att'y Gen. No. 90-099 at 2-436; 1990 Op. Att'y Gen. No. 90-007 at 2-32 through 2-33.

We are aware that in two cases, the Ohio Supreme Court has advised, in dicta, that "if a document composed of information outside the scope of R.C. 149.43 was found to be 'personal' in nature as defined in R.C. 1347.01(E), then [a public office] would be under an affirmative duty, pursuant to R.C. 1347.05(G), to prevent its disclosure."[5] *State ex rel. Dispatch Printing Co. v. Wells*, 18 Ohio St. 3d 382, 385, 481 N.E.2d 632, 634-35 (1985); *see also State ex rel. Fant v. Enright*, 66 Ohio St. 3d 186, 188, 610 N.E.2d 997, 999 (1993). In

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[4] R.C. 1347.01(E) defines "[p]ersonal information" as "any information that describes anything about a person, or that indicates actions done by or to a person, or that indicates that a person possesses certain personal characteristics, and that contains, and can be retrieved from a system by, a name, identifying number, symbol, or other identifier assigned to a person." *See also* R.C. 1347.01(F) (defining "[s]ystem").

[5] R.C. 1347.05(G) requires every state or local agency that maintains a personal information system to "[t]ake reasonable precautions to protect personal information in the system from unauthorized modification, destruction, use, or disclosure."

both of these cases, however, the phrase "information outside the scope of R.C. 149.43" refers to information that failed to qualify as a "record" in the first instance. *State ex rel. Dispatch Printing Co.*, 18 Ohio St. 3d at 385, 481 N.E.2d at 634 (applying an earlier version of R.C. 149.43); *State ex rel. Fant*, 66 Ohio St. 3d at 188, 610 N.E.2d at 999 (applying the definition of "[r]ecords" at R.C. 149.011(G)). We established in the opening discussion that run sheets created and maintained by a county EMS organization constitute "[r]ecords," as defined in R.C. 149.011(G). Since, in addition, a county EMS organization is a "[p]ublic office" as defined in R.C. 149.011(A), the information on the run sheets is within the scope of R.C. 149.43. Therefore, the provisions of R.C. Chapter 1347 do not apply to prevent disclosure of personal information on run sheets.

In summary, only certain information on a run sheet is subject to redaction pursuant to R.C. 149.43(A)(1)(p), the exception for "records the release of which is prohibited by state or federal law." Pursuant to R.C. 3701.243(A), an EMS organization is prohibited from disclosing "(1) [t]he identity of any individual on whom an HIV test is performed; (2) [t]he results of an HIV test in a form that identifies the individual tested; [and] (3) [t]he identity of any individual diagnosed as having AIDS or an AIDS-related condition," and must redact such information from the run sheet prior to disclosure pursuant to R.C. 149.43(B). The federal constitutional right of privacy prohibits the disclosure of social security numbers and of information that identifies an individual as having a stigmatizing medical condition. Such information must also be redacted from a run sheet prior to disclosure pursuant to R.C. 149.43(B).

We now turn to application of the medical records exception of R.C. 149.43(A)(1)(a). Information subject to this exception is not a public record and is not subject to mandatory disclosure under R.C. 149.43(B).

For purposes of public records law, a "medical record" is defined as "any document or combination of documents, except births, deaths, and the fact of admission to or discharge from a hospital, that pertains to the medical history, diagnosis, prognosis, or medical condition of a patient and that is generated and maintained in the process of medical treatment." R.C. 149.43(A)(3). Both prongs of the definition must be satisfied: "In order to fit within the 'medical record' exception to the public records law, 'a record must pertain to a medical diagnosis *and* be generated and maintained in the process of medical treatment.' (Emphasis *sic.*)" *State ex rel. Strothers v. Wertheim*, 80 Ohio St. 3d 155, 158, 684 N.E.2d 1239, 1242 (1997) (quoting *State ex rel. Toledo Blade Co. v. Telb*, 50 Ohio Misc. 2d 1, 10, 552 N.E.2d 243, 251 (C.P. Lucas County 1990)); *accord State ex rel. Multimedia, Inc. v. Snowden*, 72 Ohio St. 3d 141, 144-45, 647 N.E.2d 1374, 1379 (1995). Thus, the term "medical record," for purposes of the public records law, is limited in its scope, and may not include all information collected in the process of treatment. *See Ward v. Johnson's Indus. Caterers, Inc.*, No. 97APE11-1531, 1998 Ohio App. LEXIS 2841, at *18 (Ct. App. Franklin County June 25, 1998) (stating that, as defined in R.C. 149.43(A)(3), "the term 'medical record' does not mean any record that pertains to medically-related subjects").

Applying the two-part definition of R.C. 149.43(A)(3), the Cuyahoga County Court of Appeals has held that the documentation on a run sheet of the treatment of a living patient is a medical record and is exempt from disclosure under R.C. 149.43(B). *See State ex rel. Richard v. Cleveland Metro Health Ctr.*, 84 Ohio App. 3d 142, 616 N.E.2d 549 (Cuyahoga County 1992); *State ex rel. NBC v. City of Cleveland*, 82 Ohio App. 3d 202, 214, 611 N.E.2d 838, 845-46 (Cuyahoga County 1992); *accord* 1996 Op. Att'y Gen. No. 96-005 at 2-21 (extending the same analysis to run sheets collected from local EMS organizations by the State Board of Emergency Medical Services). Accordingly, when a run sheet created and

maintained by a county EMS organization documents treatment of a living patient, the EMS organization is authorized, pursuant to R.C. 149.43(A)(1)(a), to redact information "that pertains to the medical history, diagnosis, prognosis, or medical condition" of the recipient of the emergency medical services. The medical record exception does not permit, however, the redaction of names, addresses, or other non-medical personal information.

Conversely, if an individual is deceased when the emergency medical services squad arrives, documentation of that fact on a run sheet does not qualify as a medical record because it is not generated in the process of treatment. *State ex rel. NBC*, 82 Ohio App. 3d at 214, 611 N.E.2d at 846; *State ex rel. Ware v. City of Cleveland*, 55 Ohio App. 3d 75, 77, 562 N.E.2d 946, 948 (Cuyahoga County 1989); *accord* 1996 Op. Att'y Gen. No. 96-005 at 2-21; *see also* R.C. 149.43(A)(3) (excepting "deaths" from the definition of medical record). Accordingly, none of the information on such a run sheet can be redacted pursuant to the medical records exception. These run sheets are public records, except to the extent that they contain information that must be redacted under the "catch-all" exception of R.C. 149.43(A)(1)(p).

We conclude, therefore, in response to your first question, that when a run sheet is created and maintained by a county EMS organization, all information on the run sheet that does not satisfy either the medical records exception, R.C. 149.43(A)(1)(a), or the exception for "[r]ecords the release of which is prohibited by state or federal law," R.C. 149.43(A)(1)(p), is a public record and must be disclosed pursuant to R.C. 149.43(B).

You have asked, in addition, what information *may* be released to the public. As discussed above, information that is not subject to an exception from the definition of public record under R.C. 149.43(A)(1)(a)-(p) is information that *must* be released. Accordingly, your second question pertains only to information that is subject to an exception. Although R.C. 149.43(A) creates exceptions to public disclosure, it does not prohibit disclosure. *Henneman v. City of Toledo*, 35 Ohio St. 3d at 244-45, 520 N.E.2d at 211. Excepted information may nonetheless be voluntarily disclosed by a public office, unless disclosure is otherwise prohibited by state or federal law. However, "[v]oluntary disclosure can preclude later claims that records are exempt from release as public records." *See, e.g., State ex rel. Zuern v. Leis*, 56 Ohio St. 3d 20, 22, 564 N.E.2d 81, 84 (1990); *accord State ex rel. Gannett Satellite Network*, 80 Ohio St. 3d at 265, 685 N.E.2d at 1227-28.

As demonstrated in the discussion of your first question, there are provisions of state or federal law that prohibit the disclosure of certain types of information that may appear on run sheets. To the extent that these prohibitions apply, a county EMS organization has an affirmative duty not to disclose that information in response to a public records request. Instead, disclosure may only be made as permitted by the applicable provision of law. *See* 1990 Op. Att'y Gen. No. 90-007 (syllabus, paragraph one); *accord* 1990 Op. Att'y Gen. No. 90-099 at 2-436 ("[c]onfidentiality is granted ... by specific statutory provisions"). Thus, any information that satisfies the "catch-all" exception of R.C. 149.43(A)(1)(p) not only may be redacted, in must be redacted.

Of the other exceptions listed in R.C. 149.43(A)(1), some specifically incorporate other provisions of state law that prohibit disclosure, and thus information that comes within such provisions also must be redacted. *See, e.g.* R.C. 149.43(A)(1)(j) (incorporating R.C. 109.573, which imposes specific restrictions on the disclosure of certain DNA records). The medical records exception of R.C. 149.43(A)(1)(a), however, does not incorporate any such prohibitions. Thus, information that satisfies the medical records exception is not prohibited from disclosure, unless other state or federal prohibitions apply to that same information. Accordingly, information on a run sheet that satisfies the medical records exception of R.C. 149.43(A)(1)(a), but that is not also subject to the exception of R.C.

149.43(A)(1)(p), may be released to the public in response to a public records request, but a county EMS organization is under no obligation to do so.

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

1. When a run sheet is created and maintained by a county emergency medical services (EMS) organization, all information on the run sheet that does not safisfy either the medical records exception, R.C. 149.43(A)(1)(a), or the exception for "records the release of which is prohibited by state or federal law," R.C. 149.43(A)(1)(p), is a public record and must be disclosed pursuant to R.C. 149,43(B).

2. Information on run sheet that satisfis the medical recrords exception of R.C. 149.43(A)(1)(a), but that is not subject to the exception of R.C.149.43(1)(p), may be released to releasd to the public in response to a public records request, but a county EMS organization is under no obligation to do so.

3. Pursuant to R.C. 3701.243(A), a county EMS organization responding to a public records request for run sheets is prohibited from disclosing "(1) [t]he identity of any individual on whom an HIV test is performed; (2) [t]he results of an HIV test in a form that identifies the idividual tested; [and] (3) [t]he identity of any individual diagnosed as having AIDS or an AIDS-related conditin." Pursuant to R.C. 3701.243(A) and R.C. 149.43(A)(1)(p), this information is not a public record and must be redacted rom a run sheet prior to its disclosure to R.C. 149.43(B).

4. Pursuant to the federal constitutional right of privacy, a county EMS organization responding to a public records request for run sheets is prohibited from disclosing an individual's social security number or any information that identifies in individual as having a stigmatizing medical condition. Pursuant to the federal constitutional right of privacy and R.C. 149.43(A)(1)(p), this information is not a public record nd must redaced from a run sheet prior to its dislosrue pursuant to R.C.149.43(B).