

**OPINION NO. 90-007****Syllabus:**

1. Where a provision of state or federal law prohibits the release of information in a record kept by the Department of Human Services, a county department of human services or a children services board, the terms of that provision control to whom and under what circumstances the record may be released.
2. Unless a provision of state or federal law explicitly bars disclosure to the person who is the subject of the information kept by an Ohio public office, R.C. Chapter 1347 permits the person who is the subject of such information contained in a personal information system to inspect and receive a copy of that information. However, information that is exempted by R.C. 1347.04 and records that do not constitute "personal information systems" as that term is used in R.C. Chapter 1347 are not subject to the disclosure provisions of R.C. Chapter 1347.
3. R.C. Chapter 1347 is not "a provision of state law prohibiting the release of information," and, therefore, "personal information" is not an exception to the definition of the term "public record" in R.C. 149.43.
4. Where state law prohibits the release of information in a record kept by the Department of Human Services, a county department of human services or a children services board, such prohibition remains effective despite the death of the subject of the record.

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**To: Roland T. Hairston, Director, Department of Human Services, Columbus, Ohio**

**By: Anthony J. Celebrezze, Jr., Attorney General, March 9, 1990**

I have before me your predecessor's request for my opinion regarding the confidentiality of records kept by agencies of the State of Ohio that administer public assistance programs.<sup>1</sup> After discussion between members of our respective staffs, I have rephrased your specific questions, as follows:

1. With respect to R.C. 329.091, R.C. 2151.421, R.C. 3107.17, R.C. 5101.181, R.C. 5101.182, R.C. 5101.572, R.C. 5101.61, R.C. 5103.33, R.C. 5104.011, R.C. 5107.02, R.C. 5153.17, and R.C. Chapter 1347, what is the duty of the Department of Human Services to maintain the confidentiality of information contained in a record kept by the Department of Human Services, a county department of human services or a children services board regarding a client of any of these agencies?
2. Does the death of a client alter the duty of the Department of Human Services to maintain the confidentiality of information

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<sup>1</sup> "Public assistance, whether of a financial, medical or social services nature, is a system of assisting in the provision of the basic essentials of food, clothing, shelter and medical services to those who lack resources." Ohio Department of Public Welfare, *Public Assistance Manual*, Introduction (Jan. 1988); see also [1989-1990 Monthly Record] Ohio Admin. Code 5101:4-1-03(00) at 54 ("[p]ublic assistance' means any of the following programs authorized by the Social Security Act of 1935, as amended: old-age assistance; aid to families with dependent children, including ADC for children of unemployed parents; aid to the blind; aid to the permanently and totally disabled; and aid to the aged, blind, or disabled. Public assistance also refers to general assistance").

contained in a record kept by the Department of Human Services, a county department of human services or a children services board regarding a client of any of these agencies?

To answer your questions it is essential to examine several statutes governing public records. The first of these, R.C. 149.011(G), defines "records" broadly to include whatever information a public office keeps, by stating:

"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.

Records may fall within the definition of a "public record," as follows:

"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 medical records, records pertaining to adoption, probation, and parole proceedings, records pertaining to actions under section 2151.85 of the Revised Code and to appeals of actions arising under that section, records listed in division (A) of section 3107.42 of the Revised Code, trial preparation records, confidential law enforcement investigatory records, and records the release of which is prohibited by state or federal law.

R.C. 149.43(A)(1).

Since information possessed by a public office is generally a public record unless one of the specific exceptions of R.C. 149.43 applies, information kept by the Ohio Department of Human Services, a county department of human services or a county children services board is within the definition of public record in R.C. 149.43 if these entities are "public offices." R.C. 149.011(A) broadly defines "public office" to include, "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."

R.C. 121.02(I) establishes the Department of Human Services as an administrative department of the State of Ohio. Among the various functions of the Department of Human Services is the responsibility to administer the public assistance program of the State of Ohio. *See, e.g.*, R.C. 5101.10 (matching federal funds for purposes of personnel training, education and research in public welfare, and the delivery of social services from other public agencies or nonprofit corporations); R.C. 5101.141 (administration of federal payments for foster care and adoption assistance); R.C. 5104.011 (governance of the operation of child day-care centers); R.C. 5107.02 (administration of aid to dependent children); R.C. 5113.05 (supervision of the administration of general assistance). Additionally, R.C. 329.01 establishes within each county a county department of human services that is responsible for the administration of public assistance within the county. *See, e.g.*, R.C. 329.04 (aid to dependent children, public social services, general assistance, and any matter relating to human services imposed by law); R.C. 329.042 (food stamp program); R.C. 329.05 (administration of other state or local public welfare activities). Pursuant to R.C. 5153.07, the optional establishment of a children services board in a county is permitted. *See also* R.C. 5153.02 (county department of human services may act as a county children services board); R.C. 5153.04 (board of trustees of county children's home may act as children services board). A county children services board provides public assistance to children of the county considered by the board or the county department of human services to be in need of public care or protective services. R.C. 5153.16. The Department of Human Services, a county department of human services and a county children services board, thus, are all entities of the state that provide public assistance. Care by the state of its dependent residents serves a public purpose and is a proper state function. *See generally, Auditor of Lucas County v. State ex rel. Boyles*, 75 Ohio St. 114, 78 N.E. 955 (1906); *State ex rel. Ranz v. City of Youngstown*, 140 Ohio

St. 477, 45 N.E.2d 767 (1942); 1950 Op. Att'y. Gen. No. 1586, p. 152. Therefore, the Department of Human Services, a county department of human services and a county children services board are all established under state law to serve a state governmental function and each is a "public office" for purposes of R.C. 149.43.

The Ohio Public Records Act, R.C. 149.43 and related sections, is a strong statement of legislative policy favoring free public access to government records. *See State ex rel. Cincinnati Post v. Schweikert*, 38 Ohio St. 3d 170, 527 N.E.2d 1230 (1988). R.C. 149.43(B), which provides that any person may inspect public records and may receive a copy upon request, is a codification of the common law rule that most, but not all, government records should be available for public inspection. *Brown, The Right to Inspect Public Records in Ohio*, 37 Ohio St. L.J. 518, 536 (1976). The Ohio Supreme Court recently reaffirmed this principle by repeating the long-standing common law principle that:

"in Ohio...public records are the people's records, and that the officials in whose custody they happen to be are merely trustees for the people; therefore anyone may inspect such records at any time, subject only to the limitation that such inspection does not endanger the safety of the record, or unreasonably interfere with the discharge of the duties of the officer having custody of the same."

*State ex rel. National Broadcasting Co. v. City of Cleveland*, 38 Ohio St. 3d 79, 81, 526 N.E.2d 786, 788 (1988) (quoting *State ex rel. Patterson v. Ayers*, 171 Ohio St. 369, 371, 171 N.E.2d 508, 509 (1960) (citation omitted)).

To facilitate broad public access to governmental records, the provisions of R.C. 149.43 are to be interpreted liberally. *State ex rel. Plain Dealer Publishing Co. v. Krouse*, 51 Ohio St. 2d 1, 364 N.E.2d 854 (1977); *see also* R.C. 149.43(B). Exceptions to the Public Records Act, however, are to be interpreted strictly, with any doubt about the applicability of an exception being resolved in favor of disclosure. *State ex rel. National Broadcasting Co.* Both of these rules of construction reinforce the broadly inclusive definition of "public record" which makes most governmental information open to public access. Unless one of the exceptions of R.C. 149.43 applies, information kept by the Department of Human Services, a county department of human services or a county children services board is a public record subject to the inspection and copying requirements of R.C. 149.43(B).

While public assistance information falls generally within the definition of "public record," some of this information may be properly characterized as falling within one of the specifically excepted classes listed in R.C. 149.43(A)(1), *e.g.*, medical records or adoption records, even though the information is included in the records of the Department of Human Services, a county department of human services or a county children services board. Such excepted information is not a public record under R.C. Chapter 149 and is not subject to the public access recognized by R.C. 149.43(B). Only the information comprising excepted material may be withheld from disclosure; the remainder must be disclosed upon request of any person. *State ex rel. Outlet Communications, Inc. v. Lancaster Police Dep't*, 38 Ohio St. 3d 324, 528 N.E.2d 175 (1988). Information which is excepted from the definition of a public record may be redacted, but the remainder of the information not falling within one of the exceptions of R.C. 149.43(A)(1) must be released. *State ex rel. National Broadcasting Co.*, 38 Ohio St. 3d at 85, 526 N.E.2d at 791-92.

Of the various exceptions enumerated in the statute itself, the final exception to the public records definition of R.C. 149.43(A)(1) includes "records the release of which is prohibited by state or federal law." A careful review of state and federal statutes reveals that no state or federal statute prohibits the release of information kept by the Department of Human Services, a county department of human services or a county children services board. Instead, the legislative approach has been to make confidential<sup>2</sup> only narrow classes of information kept by these

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<sup>2</sup> I note that "confidentiality" is not statutorily defined. In the absence of a statutory definition, a term is given its common meaning. R.C. 1.42;

agencies. See 1988 Op. Att'y Gen. No. 88-103, at 2-510; see also 7 U.S.C. § 2020 (each state must submit a plan of operation for the food stamp program which shall provide safeguards limiting use or disclosure of information obtained); 42 U.S.C. § 602 (a state plan for aid and services to families with needy children must provide safeguards which restrict the use or disclosure of information concerning applicants or participants).

Your letter refers to a number of program-specific statutes and R.C. Chapter 1347. I will confine my discussion of confidentiality<sup>3</sup> of public assistance records under the jurisdiction of the Department of Human Services to records within the ambit of those provisions, specifically R.C. 329.091 (report of recipients of public assistance and public assistance case files),<sup>4</sup> R.C. 2151.421 (reports and central registry of child abuse and neglect cases), R.C. 3107.17 (adoption and placement for adoption records),<sup>5</sup> R.C. 5101.181 (Department of Human Services public assistance records used to determine overpayment when matched with public employment, workers' compensation and public retirement system records), R.C. 5101.182 (state taxation records of public assistance recipients), R.C. 5101.572 (information identifying recipients of public assistance used to determine third party liability for medicaid payments), R.C. 5101.61 (reports and investigatory records pertaining to abuse, neglect or exploitation of impaired or handicapped adults sixty years of age or older who live in an independent living arrangement), R.C. 5103.33 (records of adult foster care facilities), R.C. 5104.011 (certain records of child day care facilities), R.C. 5107.02 (aid to dependent children program records), R.C. 5153.17 (records of investigations conducted by county department of human services and county children services boards) and R.C. Chapter 1347 (information in personal information systems).

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*State v. Dorso*, 4 Ohio St. 3d 60, 446 N.E.2d 449 (1983). "Confidential" means "told in confidence; imparted in secret." *Webster's New World Dictionary* 297 (2d college ed. 1982). "Confidence" includes definition as "the belief that another will keep a secret; assurance of secrecy." *Id.* The common definition of confidentiality implies that the information is subject to treatment which protects an individual's privacy interests. See *Black's Law Dictionary* 270 (5th ed. 1979) (definition of "confidentiality" includes "treated as private and not for publication"). This definition indicates that the disclosure of confidential information is limited. The limitation on disclosure is the hallmark of all privacy legislation. Recchie & Wayland, *Ohio's Privacy Act: An Analysis*, 10 U. Tol. L. Rev. 159, 186 (1978). In Ohio, although confidentiality is deeply rooted in the constitutional right of privacy, its embodiment is in statutory expression.

<sup>3</sup> For purposes of this opinion, I will treat the statutes limiting disclosure of specified information kept by the Department of Human Services, a county department of human services or a county children services board as a "confidentiality" statute, whether or not the term "confidential" is expressly used. Such statutes treat the information referenced as confidential in that the release of that information is restricted. For examples of confidentiality statutes that use the term "confidential," see R.C. 2151.421(H)(1); R.C. 5103.33; R.C. 5104.011; R.C. 5153.17; but for examples of confidentiality statutes that do not use the term "confidential," see R.C. 329.091; R.C. 3107.17; R.C. 5101.182; R.C. 5101.61; R.C. 5107.02.

<sup>4</sup> Filing of the report designated in R.C. 329.091 with the county auditor is permitted but not required. 1980 Op. Att'y Gen. No. 80-036. R.C. 329.091 appears, however to be in conflict with federal law which may prohibit public disclosure of some information in the report. Op. 80-036; 1983 Op. Att'y Gen. No. 83-071.

<sup>5</sup> R.C. 149.43(A)(1) expressly excepts "records pertaining to adoption...proceedings," as well as "records listed in Division (A) of section 3107.42 of the Revised Code," from the definition of a "public record." Records listed in R.C. 3107.42(A) concern the procedure permitting the release of identifying information likely to assist an adopted person in identifying his name by birth or one or both of his biological parents.

Under both the common law and the public records statutes, confidentiality of information kept by a public office is a matter of specific statute. Recchie & Wayland, *Ohio's Privacy Act: An Analysis*, 10 U. Tol. L. Rev. 159, 188 (1978). This ad hoc legislative approach has resulted in numerous Ohio statutes which limit the disclosure of information; many of these limitations concern the information about recipients of public assistance. The General Assembly, however, has determined to treat only certain public assistance information as specifically confidential. Ohio statutes which make public assistance information confidential serve to protect the right of privacy possessed by the person who is the subject of the information. See generally, *Ohio Civil Rights Comm'n v. Campbell*, 46 Ohio App. 2d 110, 113, 345 N.E.2d 438, 441 (Franklin County 1975).<sup>6</sup>

Wide variation in the protection of privacy is apparent when specific public assistance records are compared. Adoption records, for example, are subject to access only by persons with the permission of the probate court. R.C. 3107.17. Even the adopted person, as the subject of the records, is not permitted access. R.C. 3107.42; R.C. 3107.43. R.C. 329.091, however, as an example of a far less restrictive treatment of public assistance records, allows any elector of the county to examine the report filed by the county auditor listing the names of recipients of public assistance.

Moreover, certain public assistance statutes specifically limit access by designating the persons entitled to access, thereby barring access to all other persons. See, e.g., R.C. 5101.61 (legal counsel for, and subject of, a report under R.C. 5101.61); R.C. 5103.33 (parties to a contested case); R.C. 5153.17 (persons authorized by executive secretary of children services board). Exceptions to the statutes that impose confidentiality requirements, however, are prevalent. See, e.g., R.C. 3107.17(D) (adopted person and, during adopted person's minority, adoptive parents allowed access to biological parents' social and medical history); R.C. 5103.33 (published list of licensed adult foster care facilities); R.C. 5104.011 (roster and attendee information).

In addition to classes of program-specific information being made confidential by statute, specified information may be confidential in that its use is restricted to specific purposes. Of the statutory provisions under discussion, most contain express language that requires that use of the information be limited to, or directly connected with, the administration of public assistance. See R.C. 329.091; R.C. 5101.181; R.C. 5101.182; R.C. 5101.572; R.C. 5104.011; R.C. 5107.02. Several of these statutes permit the information to be disclosed for limited purposes, e.g., as evidence, R.C. 329.091, by order of a court, R.C. 5103.33, and for enforcement of R.C. Chapter 5104, R.C. 5104.011. Moreover, penalties for violation by improper use range from criminal penalties, R.C. 329.99 and R.C. 5107.99, to disqualification from holding public employment, R.C. 5101.181 and R.C. 5101.182.

The degree of confidentiality of Ohio public assistance records, thus, varies depending upon the particular record and the degree of confidentiality mandated by the controlling statute. Each of the various confidentiality statutes is the result of a separate balancing by the General Assembly, weighing the right of public access against the individual's right of privacy. To determine the degree of confidentiality to be accorded particular information kept by the Department of Human Services, a county department of human services or a children services board, scrutiny of the controlling statute is required. No general rule regarding confidentiality applies to all, or even most, public assistance records.

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<sup>6</sup> The right of privacy in confidential treatment of public assistance information is to protect the dignity of the recipient. Privacy Protection Study Comm'n, *Personal Privacy in an Information Society* 446 (1977). Additionally, pragmatic reasons exist for such confidentiality provisions. For example, in the case of the reporting requirements in R.C. 5153.17, it "can be argued that confidentiality must be guaranteed in order to assure either that private citizens will readily report child abuse or neglect incidents or that professional personnel will speak or write freely about the case". *Davis v. Trumbull County Children Services Bd. (In re Barzak)*, 24 Ohio App. 3d 180, 184-85, 493 N.E.2d 1011, 1016 (Trumbull County 1985).

Several of the statutes making public assistance information confidential impose a duty upon the Department of Human Services to promulgate rules to safeguard specified information. Although a regularly adopted administrative rule has the force of law, unless unreasonable or in clear conflict with law, *Kroger Grocery & Baking Co. v. Glander*, 149 Ohio St. 120, 77 N.E.2d 921 (1948), state agencies cannot promulgate rules absent statutory authority, *Burger Brewing Co. v. Thomas*, 42 Ohio St. 2d 377, 329 N.E.2d 693 (1975), and such rules cannot extend beyond the scope of the granted authority, *Burger Brewing Co.*, 42 Ohio St. 2d at 379, 329 N.E.2d at 695. Inasmuch as no statutory authority invests the Department of Human Services with rulemaking authority regarding confidentiality of public assistance information generally, the rulemaking authority is limited to regulating those public assistance programs specified in the authorizing statutes. Rules promulgated by the Department of Human Services, thus, apply only to those public assistance programs where specific rulemaking authority has been granted to the department. See R.C. 2151.421 (authority for 8 Ohio Admin. Code 5101:2-34-38 and 5101:2-35-20); R.C. 3107.17(E)(i) (prescribed form); R.C. 5101.181(A) (authority for 8 Ohio Admin. Code 5101:1-1-60); R.C. 5101.572 (authority for 8 Ohio Admin. Code 5101:1-1-03); R.C. 5103.31 (authority for 8 Ohio Admin. Code 5101:2-19-06); R.C. 5104.011 (authority for 8 Ohio Admin. Code 5101:2-12-59 and 5101:2-14-26); R.C. 5107.02 (authority for 8 Ohio Admin. Code 5101:1-1-03).

Additionally, provisions of federal law that grant public assistance to Ohio residents through programs administered by the State of Ohio, e.g., 42 U.S.C. § 602 (aid to families with dependent children), require confidentiality safeguards. Various Ohio statutes mandating confidential treatment of public assistance information are the legislative enactment of these safeguards as part of the state plan for such federal assistance. See, e.g., R.C. 5107.02 (aid to families with dependent children).

Although most records kept by the government must be open to the public, the exceptions provided in R.C. 149.43, both those specifically enumerated and the broad final exception which incorporates all other relevant laws by reference, make a significant number of records confidential. 1980 Op. Att'y Gen. No. 80-096, at 2-375. The purpose of these laws, which restrict the public's otherwise broad right of access, is to protect the individual's right of privacy. *Campbell*, 46 Ohio App. 2d at 113, 345 N.E.2d at 441.

The Ohio Supreme Court first recognized the existence of a fundamental right of privacy in *Housh v. Peth*, 165 Ohio St. 35, 133 N.E.2d 340 (1956). The court defined the right of privacy as "the right of a person to be let alone, to be free from unwarranted publicity, and to live without unwarranted interference by the public in matters with which the public is not necessarily concerned." *Id.* at syllabus para. 1. While a constitutional basis for the right to privacy was not expressly indicated by the court in *Housh v. Peth*, the United States Supreme Court in *Griswold v. Connecticut*, 381 U.S. 479 (1965), located the right of privacy within the penumbra of the first amendment of the United States Constitution. Since *Griswold*, other bases of the right have been recognized within the Constitution. See *Whalen v. Roe*, 429 U.S. 589, 598, at n. 23 (1977). The right to privacy may also be implicit within Ohio Const. art. I, §1.<sup>7</sup> *Jacobs v. Benedict*, 35 Ohio Misc. 92, 301 N.E.2d 723 (C.P. Hamilton County 1973), *aff'd*, 39 Ohio App. 2d 141, 316 N.E.2d 898 (Hamilton County 1973); *Doe v. Univ. of Cincinnati*, 42 Ohio App. 3d 227, 231, 538 N.E.2d 419, 424 (Franklin County 1988). In *Whalen v. Roe*, the United States Supreme Court found that the right of privacy applies to personal information kept by the government by recognizing that one of the interests protected by the right to privacy is the "individual interest in avoiding disclosure of personal matters." 429 U.S. at 599; *accord*, *United States Dept. of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. \_\_\_, \_\_\_ (1989); *see also Ohio Educ. Ass'n v. Bd. of Educ. of the Great Oaks Joint Vocational School Dist.*, No. A 8700770, slip op. (C.P. Hamilton County

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<sup>7</sup> Ohio Const. art. I, §1 provides: "All men are, by nature, free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and seeking and obtaining happiness and safety."

May 2, 1988); *State ex rel. Petty v. Wurst*, No. CA89-06-085, slip op. (Ct. App. Butler County Oct. 30, 1989).

No Ohio statute, however, grants a general right of privacy to individuals that extends to information about them maintained by government agencies. In that sense, Ohio does not have a "privacy act." Only two widely applicable statutes regarding privacy in government-held information have been enacted by the General Assembly, R.C. 149.40 and R.C. Chapter 1347. R.C. 149.40 requires public offices to "cause to be made only such records as are necessary for the adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency and for the protection of the legal and financial rights of the state and persons directly affected by the agency's activities."

The second "privacy" enactment is R.C. Chapter 1347, which, while frequently called the Ohio "Privacy Act,"<sup>8</sup> does not codify the common law right of privacy. Recchie & Wayland, *supra*, at 161. Instead, this chapter focuses narrowly upon governmental recordkeeping practices and serves to protect the privacy rights of individuals by restricting excessive recordkeeping by government. Gotherman, *The Ohio Privacy Act*, 7 Cap. U.L. Rev. 177 (1977); Recchie & Wayland, *supra*, at 161; *accord, Henneman v. City of Toledo*, 35 Ohio St. 3d 241, 245, 520 N.E.2d 207, 211 (1988); 1975-1976 Ohio Laws 236 (Am. Sub. S.B. 99, eff. July 21, 1976) at preamble.

R.C. Chapter 1347 applies to "personal information," which R.C. 1347.01(E) defines 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." R.C. Chapter 1347 generally applies to all systems of personal information maintained by Ohio state and local governmental agencies. R.C. 1347.01(A), (B); R.C. 1347.04. Like R.C. 149.40, R.C. Chapter 1347 prohibits the keeping of unnecessary records. R.C. 1347.05(H) (every state and local agency shall "[c]ollect, maintain, and use only personal information that is necessary and relevant to the functions that the agency is required or authorized to perform by statute, ordinance, code, or rule"). Use of personal information is restricted to "a manner that is consistent with the purposes of the [personal information] system." R.C. 1347.07. Personal information must be eliminated when it is "no longer necessary and relevant" to the governmental function, R.C. 1347.05(H). When the accuracy, relevance, timeliness or completeness of personal information is disputed by a person to whom it pertains, the information is subject to verification. R.C. 1347.09(A)(1). If the agency cannot verify the information or finds it inaccurate, the agency must, by the terms of R.C. 1347.09(A)(1), delete the information. To enforce the agency's duties of accuracy, relevance, timeliness and completeness, R.C. Chapter 1347 grants to the subject of the information the right to inspect and dispute such information and requires the agency to investigate the disputed information. R.C. 1347.08; R.C. 1347.09. R.C. Chapter 1347 does not, however, make information about individuals confidential. *Henneman*, 35 Ohio St. 3d at 245, 520 N.E.2d at 211; Op. No. 80-096.

While it may appear that the limited inspection rights granted by R.C. Chapter 1347 directly conflict with a specific confidentiality statute, both must be read together harmoniously to allow access to the person who is the subject of the

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<sup>8</sup> See, e.g., *State ex rel. Beacon Journal Publishing Co. v. Akron Metro. Housing Auth.*, 42 Ohio St. 3d 1, 535 N.E.2d 1366 (1989); *State ex rel. National Broadcasting Co. v. City of Cleveland*, 38 Ohio St. 3d 81, 526 N.E.2d 786 (1988). Although commonly referred to as the "Privacy Act," R.C. Chapter 1347 is more accurately referred to as a "personal information systems act" to avoid the erroneous popular implication that individuals are granted an encompassing individual right of privacy in records kept by governmental agencies. Curiously, the current version of R.C. Chapter 1347 does not use the term "privacy" once among its various sections.

information.<sup>9</sup> *In re Trumbull County Children Services Bd.*, 32 Ohio Misc. 2d 11, 573 N.E.2d 360 (C.P. Trumbull County 1986). A person is permitted to inspect personal information in a public assistance record that is otherwise statutorily confidential, if the information is directly relevant to him as the subject of the record.<sup>10</sup> *Davis v. Trumbull County Children Services Bd. (In re Barzak)*, 24 Ohio App. 3d 180, 493 N.E.2d 1011 (Trumbull County 1985). R.C. Chapter 1347 grants such inspection rights. *In re Trumbull County Children Services Bd.* The legislature has not mandated absolute confidentiality, barring disclosure to the person who is the subject of the record, unless the statutory provision is explicit in its intention to prohibit such disclosure. *See generally, Davis*, 24 Ohio App. 3d at 184, 493 N.E.2d at 1012; *State ex rel. Wolff v. Donnelly*, 24 Ohio St. 3d 1, 3, 492 N.E.2d 810, 812 (1986).

Since R.C. Chapter 1347 does not make information confidential, but instead grants additional inspection rights, R.C. Chapter 1347 does not function to except personal information kept by a public office from the definition of "public record" under R.C. 149.43(A)(1). Personal information under R.C. Chapter 1347, thus, is not a "record the release of which is prohibited by state or federal law." Interaction between R.C. 149.43 and R.C. Chapter 1347 is minimal due to provisions of both that expressly limit the effect of the other. R.C. 149.43(D) states: "Chapter 1347. of the Revised Code does not limit the provisions of this section." R.C. 1347.04(B) states:

The provisions of this chapter shall not be construed to prohibit the release of public records, or the disclosure of personal information in public records, as defined in section 149.43 of the Revised Code, or to authorize a public body to hold an executive session for the discussion of personal information if the executive session is not authorized under division (G) of section 121.22 of the Revised Code.

The disclosure to members of the general public of personal information contained in a public record, as defined in section 149.43 of the Revised Code, is not an improper use of personal information under this chapter.

Because the General Assembly expressly stated its legislative intention so clearly and forcefully in the express language of R.C. 149.43(D) and R.C. 1347.04(B), I must conclude that R.C. Chapter 1347 is not a provision of state law prohibiting the release of information.

Inasmuch as a public office is bound by the terms of particular provisions of law that restrict access to specified information by making it confidential, I must conclude that the Department of Human Services is required to act in accordance with any requirements of confidentiality imposed upon particular information. The

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<sup>9</sup> To the extent that information in a public assistance agency record is not contained in a "personal information system" as that term is used in R.C. Chapter 1347, such information is not subject to the disclosure provisions of R.C. Chapter 1347. 1989 Op. Att'y Gen. No. 89-084. Additionally, information that may be in a public assistance record, such as "investigatory material compiled for law enforcement purposes," is exempt from the definition of "personal information," R.C. 1347.04, and, therefore, not required to be disclosed.

<sup>10</sup> The right of access to statutorily confidential records held by a public assistance agency concerning an incident of alleged abuse, dependency or neglect of a child may be met with an *in camera* review of the relevant information by the trial judge. *See Pennsylvania v. Ritchie*, 480 U.S. 39 (1987). Neither the defendant nor defendant's legal counsel are necessarily permitted access to such records absent a finding by the trial judge that such records are favorable to the accused or material to defendant's guilt or punishment. *Id. But see Kentucky v. Stincer*, 482 U.S. 730, 738 n.9 (1987) (a state rule that precludes a defendant from access to information before trial may hinder the defendant's opportunity for effective cross-examination at trial, and, thus, such a rule may violate the U.S. Constitution's Confrontation Clause).



Department of Human Services, thus, must refer to the statutes relevant to the records kept by the public offices about which you ask in order to determine the confidentiality restrictions to be applied.

Your second question asks whether a duty to treat particular information as confidential alters upon the death of the person who is the subject of the record. No provision of R.C. Chapter 1347 provides that a personal representative of a deceased person may exercise that person's rights under R.C. Chapter 1347 to inspect personal information that is not a public record kept by a government agency. No relevant Ohio statute extends generally such a right after the death of a person who is the subject of a record made confidential under Ohio law.<sup>11</sup> The particular statutes examined herein also fail to mention such an exception. Exceptions not made by the legislature cannot be read into a statute. *Lima v. Cemetery Ass'n*, 42 Ohio St. 128 (1884); *accord, Morris Coal Co. v. Donley*, 73 Ohio St. 298, 76 N.E. 945 (1906) ("[a]n exception to the provisions of a statute not suggested by any of its terms should not be introduced by construction from consideration of mere convenience"). Absent a clear and unequivocal expression on the part of the General Assembly providing an exception, such a variance from the terms of the statute may not be implied. 1988 Op. Att'y Gen. No. 88-007.

The duties of the Department of Human Services to treat statutorily specified public assistance information as confidential requires the disclosure of such information to be made only within the limits as specified in the applicable statute. Inasmuch as no implied power of the Department of Human Services exists to permit greater disclosure of confidential information than detailed by statute, and inasmuch as exceptions in the confidentiality statutes are not to be implied where they do not expressly exist, I must conclude that the death of a client of the Department of Human Services, a county department of human services or a children services board does not alter the duty to limit the disclosure of statutorily designated confidential public assistance information according to the terms of any relevant statutory provision.

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

1. Where a provision of state or federal law prohibits the release of

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<sup>11</sup> I note that regulations under the Social Security Act at 20 C.F.R. §401.350 state, "[w]e do not consider the disclosure of information about a deceased person to be a clearly unwarranted invasion of that person's privacy." Disclosure, however, is still limited by applying other regulations "to insure that the privacy rights of a living person are not violated." Although various benefits under state programs are funded by the Social Security Act, *e.g.*, 42 U.S.C. §§ 601-675 (aid to families with dependent children), 20 C.F.R. § 401.350 appears not to apply to records kept by state programs. *See* 20 C.F.R. § 401.105 ("[t]his regulation [20 C.F.R. Pt. 401] sets out the general guidelines which we [Social Security Administration] follow in deciding to make disclosures....This regulation applies to information about an individual contained in SSA's records" (emphasis added)). The exception contained in 20 C.F.R. § 401.350 mirrors the language of the Freedom of Information Act which exempts from public access "files the disclosure of which would constitute a *clearly unwarranted invasion of privacy*." 5 U.S.C. § 552(b)(7) (emphasis added). The federal Freedom of Information Act does not apply to state agencies. *St. Michaels Convalescent Hospital v. California*, 643 F.2d 1369 (9th Cir. 1981) (Freedom of Information Act does not encompass a state agency notwithstanding the fact that a state agency receives federal funds through a federal program); *Ciccone v. Waterfront Comm'n of New York Harbor*, 438 F. Supp. 55 (S.D. N.Y. 1977); *Kerr v. United States District Court*, 511 F.2d 192 (9th Cir. 1975), *aff'd*, 426 U.S. 394 (1976). Although, it has been held that in Ohio, the right of action for invasion of privacy lapses with the death of the person who enjoyed it, *Young v. That Was The Week That Was*, 423 F.2d 265 (6th Cir. 1970), it is far from apparent that the General Assembly intended the confidentiality provided by any particular enactment to expire at the death of the subject of the information kept.

information in a record kept by the Department of Human Services, a county department of human services or a children services board, the terms of that provision control to whom and under what circumstances the record may be released.

2. Unless a provision of state or federal law explicitly bars disclosure to the person who is the subject of the information kept by an Ohio public office, R.C. Chapter 1347 permits the person who is the subject of such information contained in a personal information system to inspect and receive a copy of that information. However, information that is exempted by R.C. 1347.04 and records that do not constitute "personal information systems" as that term is used in R.C. Chapter 1347 are not subject to the disclosure provisions of R.C. Chapter 1347.
3. R.C. Chapter 1347 is not "a provision of state law prohibiting the release of information," and, therefore, "personal information" is not an exception to the definition of the term "public record" in R.C. 149.43.
4. Where state law prohibits the release of information in a record kept by the Department of Human Services, a county department of human services or a children services board, such prohibition remains effective despite the death of the subject of the record.