

OPINION NO. 92-046**Syllabus:**

1. R.C. 2151.421 does not require that a public children services agency routinely share child abuse and neglect investigation materials with the Air Force Office of Special Investigations, an agency of the federal government.
2. Each report and investigation of alleged child abuse or neglect made under R.C. 2151.421 is confidential and, pursuant to 9 Ohio Admin. Code 5101:2-34-38, the dissemination of such confidential information to an agency or organization is permitted only if the agency or organization has rules or policies

governing the dissemination of confidential information that are consistent with those of rule 5101:2-34-38.

3. A public children services agency may not share child abuse and neglect investigation materials with the Air Force Office of Special Investigations unless the Office has suitable rules or policies governing the dissemination of confidential information.
4. 9 Ohio Admin. Code 5101:2-34-38(D) defines circumstances in which the disclosure of child abuse and neglect investigation information is permitted as a matter of routine. Disclosure to the Air Force Office of Special Investigations may be permitted under these or similar provisions if confidentiality is assured and applicable requirements are satisfied.
5. A public children services agency may, pursuant to [1991-1992 Monthly Record, vol. 1] Ohio Admin. Code. 5101:2-34-71, at 280, include the Air Force Office of Special Investigations as a voluntary subscriber to a county plan of cooperation prepared pursuant to R.C. 2151.421(J), if the Office wishes to be a voluntary subscriber and if the agency determines that the participation of the Office would be appropriate. If the Office has suitable rules or policies governing the use and dissemination of confidential information, the Office may receive investigatory materials as provided in the county plan of cooperation and in 9 Ohio Admin. Code 5101:2-34-38(D)(4).
6. If a county plan of cooperation so provides, child abuse and neglect investigation materials may, pursuant to 9 Ohio Admin. Code 5101:2-34-38(D)(4), be disclosed to the Air Force Office of Special Investigations to assist in a current investigation of a report of alleged child abuse or neglect involving a principal of the case or a report of a missing child.
7. 9 Ohio Admin. Code 5101:2-34-38(F) permits disclosure of child abuse and neglect investigation information when the dissemination of information is believed to be in the best interest of an alleged child victim, his family, or caretaker; a child residing or participating in an activity at an out-of-home care setting where alleged abuse or neglect has been reported; or a child who is an alleged perpetrator. Disclosure to the Air Force Office of Special Investigations may be permitted under this provision if confidentiality is assured and the best interest standard is satisfied on the basis of particular facts.
8. A public children services agency may disclose child abuse and neglect investigation materials to the Air Force Office of Special Investigations when such disclosure is in compliance with R.C. 2151.421, R.C. 5153.17, and 9 Ohio Admin. Code 5101:2-34-38 and is for purposes authorized by those provisions; the agency is not required to obtain assurance that the Office will not use the materials for purposes other than criminal prosecution.

To: Terry A. Wallace, Director, Department of Human Services, Columbus, Ohio

By: Lee Fisher, Attorney General, September 23, 1992

Your predecessor requested an opinion concerning the authority of the Ohio Department of Human Services ("ODHS") or a public children services agency ("PCSA") to share confidential child abuse and neglect investigation reports with U.S. Air Force personnel at Wright-Patterson Air Force Base ("Base"). The questions may be stated as follows:

1. Are PCSA's required, as a matter of routine, to share child abuse and neglect investigation materials with the Air Force Office of Special Investigations?
2. If there is no such requirement, does ODHS have authority to allow, or require, counties to share this information as a matter of routine?
3. Does the answer to either of the preceding questions change if the Base cannot assure that the confidential information will not be used for purposes other than criminal prosecution—*e.g.*, the provision of social services, or imposition of a military administrative sanction or discharge? PCSA's are in general restricted in ODHS rules from releasing investigative information to any employer of any person who has been the subject of an abuse or neglect report. To do so is considered a violation of the confidentiality mandate of R.C. 2151.421. To the extent that the Base receives such information as a law enforcement agency but uses it for other than traditional law enforcement purposes (*i.e.*, criminal prosecution), there would appear to be an inevitable violation of the statute.
4. Does the preceding answer differ depending upon any of the following variables:
 - the offense occurred on or off the Base;
 - the offender is a military member or civilian;
 - the preliminary criminal investigation is being conducted by the Office of Special Investigations or a city or county law enforcement agency?

The term "public children services agency" encompasses both children services boards and county departments of human services that have assumed the administration of the children services function prescribed by R.C. Chapter 5153. See R.C. 2151.011(B)(26); 9 Ohio Admin. Code 5101:2-34-01(QQQQ); 1991 Op. Att'y Gen. No. 91-003.

Federal Jurisdiction over the Base

When the federal government acquires land within a state, the state may cede to the federal government jurisdiction in and over that land, and the federal government may accept either exclusive or partial jurisdiction. See U.S. Const. art. I, §8, cl. 17; 40 U.S.C. §255 (1988). Pursuant to R.C. 159.04, the State of Ohio has, with respect to certain lands acquired by the United States, ceded to the United States exclusive jurisdiction for all purposes except the service of civil and criminal process of the courts of the State of Ohio. According to representatives at the Base, the federal government has accepted exclusive jurisdiction, except for service of process, over the land on which the Base is located. Accord 1972 Op. Att'y Gen. No. 72-037; 1952 Op. Att'y Gen. No. 1877, p. 720; 1933 Op. Att'y Gen. No. 94, vol. I, p. 91. Where the federal government has exclusive jurisdiction, state and local law enforcement entities do not have jurisdiction to conduct investigations or carry out law enforcement. See, *e.g.*, Op. No. 72-037 (finding that a county coroner has no

authority to conduct an investigation into the cause of a death occurring in the hospital at Wright-Patterson Air Force Base, where the federal government has exclusive jurisdiction); 1952 Op. No. 1877. The federal government is authorized to enforce federal law in the enclave where it has exclusive jurisdiction; it has no duty to enforce state or local law in that area, but it may, in certain circumstances, enforce federal provisions that adopt state law by reference. See 18 U.S.C. §13 (1988) (Assimilative Crimes Act); *United States v. Webb*, 747 F.2d 278 (5th Cir. 1984) (where alleged child abuse occurred on a United States military reservation, the state statute defined the crime, but the action was a federal criminal prosecution), *cert. denied*, 469 U.S. 1226 (1985); *United States v. Brown*, 608 F.2d 551, 553 (5th Cir. 1979) (prosecution under the Assimilative Crimes Act "is not for enforcement of state law but for enforcement of federal law assimilating a state statute. The government can resort to state law for prosecution only if no act of Congress directly makes a defendant's conduct punishable" (citations omitted)).

Air Force representatives also state that there is an area of land near the Base, consisting largely of housing, to which the federal government and the state government have concurrent jurisdiction. Thus, both federal and state entities may investigate and enforce their respective laws at that location. See 40 U.S.C. §255 (1988); R.C. 159.04. See generally, e.g., 1989 Op. Att'y Gen. No. 89-108.

Child Abuse and Neglect Investigation Reports

R.C. 2151.421 and applicable rules provide for reports of known or suspected child abuse or neglect, or threats of abuse or neglect, to be made to a PCSA or to a municipal or county peace officer. See R.C. 2151.421(A)(1), (B); 9 Ohio Admin. Code 5101:2-34-03; [1991-1991 Monthly Record, vol. 1] Ohio Admin. Code 5101:2-34-04, at 280. If the report is made to a municipal or county peace officer, that officer refers it to the PCSA. R.C. 2151.421(D); 9 Ohio Admin. Code 5101:2-34-03(B). The PCSA must investigate each report, in cooperation with the applicable law enforcement agency, and submit a written report of its investigation to the law enforcement agency. R.C. 2151.421(F)(1); 9 Ohio Admin. Code 5101:2-34-06, :2-34-31 to :2-34-35. An individual who is required by R.C. 2151.421 to make a report of known or suspected child abuse and who provides his name, address, and telephone number at the time he makes the report, is entitled to make a reasonable number of requests for statutorily-specified information about the status of the child and the investigation and to receive the requested information. R.C. 2151.421(K). The PCSA is authorized to make recommendations to the county prosecuting attorney or city director of law to protect any children that are brought to its attention. R.C. 2151.421(F)(2); [1991-1992 Monthly Record, vol. 1] Ohio Admin. Code 5101:2-34-72(A)(1)(f), at 281. The purpose of the statutory scheme for the reporting and investigating of child abuse or neglect is "to protect children from abuse and/or neglect and to eliminate the source of any such abuse." *Haag v. Cuyahoga County*, 619 F.Supp. 262, 270 (N.D. Ohio 1985), *aff'd*, 798 F.2d 1414 (6th Cir. 1986); see R.C. 2151.421(I). Existing statutes and rules call for cooperation among various governmental entities. See, e.g., R.C. 2151.421(J); 9 Ohio Admin. Code 5101:2-34-31 to :2-34-35; Op. No. 89-108.

Each county is required to have a plan of cooperation setting forth the normal operating procedure to be employed by all concerned officials in carrying out their responsibilities under R.C. 2151.421 and related provisions. The plan of cooperation is prepared by a committee consisting of the presiding judge of the court of common pleas or his representative, a juvenile judge or his representative, the county peace officer, all chief municipal peace officers within the county, all chief township peace officers within the county, the county prosecuting attorney, the director of law of each city within the county, the village solicitor of each village within the county, and the PCSA. The plan of cooperation is filed with the juvenile court and with ODHS. R.C. 2151.421(J); [1991-1992 Monthly Record, vol. 1] Ohio

Admin. Code 5101:2-34-71, at 280. The investigation of a report of known or suspected child abuse or neglect is required to be made in accordance with the plan of cooperation. R.C. 2151.421(F)(1). The plan must include a system for cross-referral of reported cases of abuse and neglect as necessary, and standards and procedures to be used in handling and coordinating investigations of reports of alleged child abuse or neglect. R.C. 2151.421(J)(1), (2); [1991-1992 Monthly Record, vol. 1] Ohio Admin. Code 5101:2-34-72, at 281; see Op. No. 89-108.

In addition to the entities that are required by R.C. 2151.421(J) to participate in preparing the county plan of cooperation, rule 5101:2-34-71 allows the PCSA to include "any nonmandated county official, professional, agency, institution, or organization involved in the identification, reporting, treatment, or prevention of alleged child abuse or neglect as voluntary subscribers to the county plan." [1991-1992 Monthly Record, vol. 1] Ohio Admin. Code 5101:2-34-71(B), at 280. The Air Force Office of Special Investigations ("OSI") is a federal investigatory body that may, in certain circumstances, be responsible for investigating alleged violations of various provisions relating to child abuse and neglect. See Office of the Federal Register, National Archives and Records Administration, *The United States Government Manual 1991/92*, at 200 (1991) ("[t]he Air Force Office of Special Investigations provides criminal, counterintelligence, personnel security, and special investigative services to Air Force activities. It collects, analyzes, and reports significant information about these matters"). The OSI is, therefore, an entity that may be involved in "the identification, reporting, treatment, or prevention of alleged child abuse or neglect." [1991-1992 Monthly Record, vol. 1] Ohio Admin. Code 5101:2-34-71(B), at 280. In appropriate circumstances, the inclusion of the OSI in a county plan of cooperation may serve the purposes of R.C. 2151.421. See, e.g., *Haag v. Cuyahoga County*, 619 F.Supp. at 281 (R.C. 2151.421 "was adopted by the Ohio legislature solely for the purpose of protecting minor children from abuse and/or neglect, to prevent any further neglect or abuse of children, to enhance and protect children's welfare, and where possible, to preserve the family unit intact"); see also R.C. 2151.421(I). If the OSI wishes to be a voluntary subscriber to a county plan of cooperation, and if a PCSA determines that the participation of the OSI would be appropriate, the PCSA may, pursuant to rule 5101:2-34-71, include the OSI as a voluntary subscriber to the county plan of cooperation.

Confidentiality of Child Abuse and Neglect Investigation Reports

With respect to the confidentiality of child abuse and neglect investigation reports, R.C. 2151.421 states, in part:

(H)(1) Any report made under this section is confidential. The information provided in a report made pursuant to this section and the name of the person who made the report shall not be released for use, and shall not be used, as evidence in any civil action or proceeding brought against the person who made the report. In a criminal proceeding, the report is admissible in evidence in accordance with the Rules of Evidence and is subject to discovery in accordance with the Rules of Criminal Procedure.

(2) No person shall permit or encourage the unauthorized dissemination of the contents of any report made under this section.

See also R.C. 2151.421(K)(4).

The word "report" is used in at least three senses in R.C. 2151.421: (1) to refer to reports of known or suspected child abuse or neglect made to the PCSA or the appropriate law enforcement agency; (2) to refer to the investigation report prepared by the PCSA; and (3) to refer to reports of cases of known or suspected child abuse or neglect made to a central registry maintained by the Ohio Department

of Human Services pursuant to R.C. 2151.421(F)(1). Since R.C. 2151.421(H) speaks of "[a]ny report made under this section," it appears that the confidentiality requirements of R.C. 2151.421(H) apply to all types of reports mentioned in R.C. 2151.421. The Supreme Court of Ohio expressly stated, in *State ex rel. Renfro v. Cuyahoga County Department of Human Services*, 54 Ohio St. 3d 25, 27, 560 N.E.2d 230, 232 (1990), that "R.C. 2151.421(H)(1) clearly removes child abuse investigation reports compiled under that statute from the mandatory disclosure provisions of R.C. 149.43(B)," which provide for the disclosure of public records. *See also* 9 Ohio Admin. Code 5101:2-34-38 (setting forth confidentiality requirements for reports and investigations of alleged child abuse and neglect); 9 Ohio Admin. Code 5101:2-35-20 (setting forth confidentiality requirements for information submitted and contained in the central registry on child abuse or neglect).

While R.C. 2151.421 establishes the confidentiality of reports made under that section, R.C. 5153.17 contains more general provisions governing the disclosure of records held by a PCSA. R.C. 5153.17 states:

The county children services board or county department of human services *shall prepare and keep written records of investigations* of families, children, and foster homes, and of the care, training, and treatment afforded children, and shall prepare and keep such other records as are required by the department of human services. *Such records shall be confidential, but shall be open to inspection* by the board or department of human services, the director of the county department of human services, and by other persons, upon the written permission of the executive secretary. (Emphasis added.)

See also R.C. 2151.421(H), (K)(4); 9 Ohio Admin. Code 5101:2-34-38. Pursuant to R.C. 5153.17, confidential investigatory records held by a PCSA are open to inspection by the PCSA and the director of the county department of human services, and may be disclosed to other persons upon the written permission of the executive secretary of the PCSA. *See Op. No. 91-003.*

The word "confidential" is not defined for purposes of Ohio statutes. *See* 1990 Op. Att'y Gen. No. 90-007, at 2-28 n. 2. It should, therefore, be given its ordinary meaning. *See* R.C. 1.42. In common usage, the word "confidential" means "imparted in secret," *Webster's New World Dictionary* 297 (2d college ed. 1978), or "treated as private and not for publication," *Black's Law Dictionary* 298 (6th ed. 1990) (defining "[c]onfidentiality"). *See Op. No. 90-007.* Confidentiality protects the right of privacy of the person who is the subject of the information and may also serve the purpose of encouraging the reporting of suspected child abuse. *See generally Davis v. Trumbull County Children Services Board*, 24 Ohio App. 3d 180, 493 N.E.2d 1011 (Trumbull County 1985); *Op. No. 91-003.*

Disclosure of Child Abuse and Neglect Investigation Reports under ODHS Rules

In *Op. No. 91-003*, my predecessor determined that, pursuant to R.C. 5153.17, a PCSA executive secretary may grant written permission for access to child abuse and neglect investigation records for good cause, and that good cause may exist if the best interests of the child require the release of information or if denial of due process of law to one accused of child abuse or neglect would result from a refusal to grant access to the records. *See Davis v. Trumbull County Children Services Board; In re Trumbull County Children Services Board*, 32 Ohio Misc. 2d 11, 513 N.E.2d 360 (C.P. Trumbull County 1986). Nevertheless, "keeping...records confidential, not disclosing them, is [the PCSA's] primary responsibility under [R.C. 5153.17]. This is particularly true when the records

include a child abuse investigation report" under R.C. 2151.421(H)(1). *State ex rel. Renfro v. Cuyahoga County Department of Human Services*, 54 Ohio St. 3d at 29, 560 N.E.2d at 234.

ODHS is empowered to exercise rule-making authority to aid in the implementation of R.C. 2151.421. R.C. 2151.421(L). ODHS has exercised that power by enacting rules that clarify when the dissemination of information is "unauthorized" for purposes of R.C. 2151.421(H)(2). See *State ex rel. Renfro v. Cuyahoga County Department of Human Services*, 54 Ohio St. 3d at 27, 560 N.E.2d at 232-33; 9 Ohio Admin. Code 5101:2-34-38, :2-35-20; Op. No. 91-003.

Rule 5101:2-34-38 recites the requirement that reports and investigations of alleged child abuse and neglect be kept confidential and sets forth instances in which they may be shared. The rule requires that, prior to the dissemination of information to an agency or organization, the PCSA "verify that the agency or organization has rules or policies governing the dissemination of confidential information which are consistent with those of this rule." 9 Ohio Admin. Code 5101:2-34-38(A). The rule lists various persons to whom information may be disseminated for specified purposes, as follows:

(D) The PCSA is authorized to disseminate information in the following manner to:

- (1) Principals of the case, to inform them of:
 - (a) The allegation contained in the report;
 - (b) The disposition of the investigation.
- (2) The PCSA staff person responsible for the family foster home, adoptions, and/or the administrator or his designee of an out-of-home care setting in which the alleged child abuse or neglect occurred, to inform them of:
 - (a) The allegation contained in the report;
 - (b) The disposition of the investigation;
 - (c) Any recommendations for corrective and/or protective action.
- (3) The reporter, as acknowledgement of receipt of the report and completion of investigative responsibilities required by law;
- (4) *Law enforcement officials, as set forth in the child abuse and neglect county plan of cooperation, to assist in a current investigation of a report of alleged child abuse or neglect involving a principal of the case or a report of a missing child about whom relevant information is retained by the PCSA;*
- (5) The county prosecutor or city director of law for the purpose of legal consultation or legal action on behalf of the alleged child victim;
- (6) A guardian *ad litem* for the alleged child victim. The PCSA shall determine what information is appropriate to share in the best interest of the child;
- (7) Any PCSA or CSA [children services agency in another state] currently investigating a report of alleged child abuse or neglect involving a principal of the case or providing service to a principal of the case;
- (8) A coroner, to assist in the evaluation of a child's death due to alleged child abuse or neglect;
- (9) A physician for the purpose of diagnostic assessment of a child whom he has reason to believe may be a victim of child abuse or neglect;
- (10) Child abuse and neglect multidisciplinary team members for the purpose of consultation regarding the investigative findings and/or the case plan for the alleged child victim and his family or caretaker;
- (11) Service providers, to assist in the provision of diagnostic

evaluations and/or services to the alleged child victim and his family or caretaker;

(12) A school administrator or his designees [*sic*] for the purpose of service provision to the alleged child victim and his family or caretaker;

(13) Central registry on child abuse and neglect;

(14) An individual, agency, or organization for research purposes....

(15) A non-custodial parent to the alleged child victim when the PCSA believes such sharing to be in the best interest of the child. The PCSA shall determine what information is appropriate to share in accordance with the child's best interest.

9 Ohio Admin. Code 5101:2-34-38(D) (emphasis added). Rule 5101:2-34-38(D) thus authorizes the disclosure of confidential information to certain persons for specified purposes. In essence, it identifies instances in which there is considered to be good cause for the disclosure of confidential information contained in child abuse and neglect investigation reports. See R.C. 5153.17; Op. No. 91-003; see also 45 C.F.R. §1340.14(i) (1991).

Rule 5101:2-34-38 also authorizes the dissemination of information "when the PCSA director or his designee, or the executive secretary or his designee provides written authorization to disseminate information that is believed to be in the best interest of: (1) An alleged child victim, his family, or caretaker; (2) Any child residing, or participating in an activity, at an out-of-home care setting where a report has been made alleging child abuse or neglect; or (3) A child who is an alleged perpetrator." 9 Ohio Admin. Code 5101:2-34-38(F). The rule, thus, permits confidential information to be disclosed when a "best interest" standard is met in a particular case. Accord R.C. 5153.17; see Op. No. 91-003.

Mandatory Dissemination of Child Abuse and Neglect Investigative Materials

The first question is whether a PCSA is required, as a matter of routine, to share child abuse and neglect investigation materials with the OSI, which is a federal investigatory body. R.C. 2151.421(F)(1) states that the PCSA shall carry out its investigation "in cooperation with the law enforcement agency" and shall "submit a report of its investigation, in writing to the law enforcement agency." The term "law enforcement agency" is not defined for purposes of R.C. 2151.421. It appears, however, that the term refers to municipal police and county sheriffs, who have a duty pursuant to R.C. 2151.421 to accept reports of alleged child abuse and neglect and refer those reports to the PCSA. See R.C. 2151.421(A), (B), (D); 9 Ohio Admin. Code 5101:2-34-03(B); Op. No. 91-003.

R.C. 2151.421 does not contain any provisions specifically addressing the investigation of alleged child abuse in circumstances involving federal military personnel or facilities. R.C. 2151.421(J) does not require the plan of cooperation to include the OSI or any other representative of a federal military base. There is no suggestion in R.C. 2151.421 that the OSI should be included as "the law enforcement agency" pursuant to R.C. 2151.421(F)(1). The OSI is an agency of federal, rather than state law, and it is clear that the OSI has no responsibilities under R.C. 2151.421 and related provisions of Ohio law. Cf. Op. No. 72-037 (when the federal government has accepted exclusive jurisdiction over a military base, federal officials are not obligated under state law to report to the county coroner deaths occurring under suspicious circumstances). It follows that there is no statutory requirement

that a PCSA routinely share child abuse and neglect investigation materials with the OSI pursuant to R.C. 2151.421.¹

The OSI as a Voluntary Subscriber to a County Plan of Cooperation

As discussed above, the OSI may be a voluntary subscriber to a county plan of cooperation. See R.C. 2151.421(J); [1991-1992 Monthly Record, vol. 1] Ohio Admin. Code 5101:2-34-71, at 280. As a voluntary subscriber to the county plan, the OSI may be authorized to share in investigatory materials. See [1991-1992 Monthly Record, vol. 1] Ohio Admin. Code 5101:2-34-72(C) to (E), at 281 (a county plan of cooperation shall describe how information will be shared among subscribers; information shall be shared with mandated and voluntary subscribers pursuant to rule 5101:2-34-38). While the OSI does not appear to be "the" law enforcement agency for purposes of R.C. 2151.421(F), it is undoubtedly "a" law enforcement agency, staffed by law enforcement officials, for purposes of rule 5101:2-34-38(D)(4). That provision permits child abuse and neglect investigation materials to be disseminated to law enforcement officials, as provided in the county plan of cooperation, to assist in a current investigation of a report of alleged child abuse or neglect involving a principal of the case or a report of a missing child. If the OSI is a voluntary subscriber to the county plan, and if the county plan so provides, a PCSA may be required to disseminate child abuse and neglect investigation materials to the OSI. The OSI may, however, use such information only as provided in R.C. 2151.421 and rule 5101:2-34-38. Such sharing cannot occur unless the PCSA verifies, in accordance with rule 5101:2-34-38(A), that the OSI has suitable rules or policies governing the dissemination of confidential information.

Authority of ODHS to Allow or Require Counties to Share Investigatory Materials with the OSI

The second question is whether ODHS has the authority to allow, or require, counties to share child abuse and neglect investigation materials with the OSI as a matter of routine. The word "routine" is defined as "a regular, more or less unvarying procedure, customary, prescribed, or habitual, as of business or daily life." *Webster's New World Dictionary* 1241 (2d college ed. 1978). As discussed above, rule 5101:2-34-38 lists specific circumstances in which disclosure is permitted. Those circumstances include instances in which it is presumed that good cause will exist as a matter of routine. See 9 Ohio Admin. Code 5101:2-34-38(D).

¹ If an individual who is associated with the OSI is required to make a report of child abuse or neglect pursuant to R.C. 2151.421(A), that individual may be entitled to receive certain information about the status of the child and the investigation pursuant to R.C. 2151.421(K). The OSI as an organization does not, however, have any right to receive information pursuant to R.C. 2151.421(K).

Other circumstances in which information held by a PCSA must be disclosed are described in R.C. 2151.141, which pertains to instances in which a complaint has been filed that a child is an abused, neglected, or dependent child. In such circumstances, certain entities are entitled to receive records pertaining to the child, or to have a court determine the extent to which the records must be supplied. R.C. 2151.141 does not, however, permit the disclosure of records or information if that disclosure is prohibited by a provision of the Revised Code and there is no statute specifically authorizing the disclosure. R.C. 2151.141(D). Thus, R.C. 2151.141 in effect incorporates the confidentiality requirements of R.C. 2151.421 for matters covered by that statute. See 1991 Op. Att'y Gen. No. 91-003.

Disclosure to the OSI, as a law enforcement agency, may be included under rule 5101:2-34-38(D)(4) if such disclosure is contemplated in the county plan of cooperation. Nothing prevents the Department of Human Services from adopting other provisions permitting routine disclosure to the OSI if the required confidentiality is assured and good cause requires such disclosure.

In contrast, disclosure under rule 5101:2-34-38(F) on the basis of the "best interest" standard can never be made as a matter of routine. Rather, such disclosure requires a determination of whether, on the basis of particular facts, disclosure is in the best interest of one of the enumerated persons. *See* Op. No. 91-003.

Use of Disseminated Information

The third question pertains to concerns that information disclosed to the OSI may be used for purposes other than criminal prosecution - *e.g.*, for the provision of social services or the imposition of a military administrative sanction or discharge. The letter of request states that PCSA's "are in general restricted in ODHS rules from releasing investigative information to any employer of any person who has been the subject of an abuse or neglect report," and indicates that disclosure to an employer is considered a violation of the confidentiality mandate of R.C. 2151.421. The letter indicates that, if the base receives such information as a law enforcement agency but uses it for other than traditional law enforcement purposes (*i.e.*, criminal prosecution), "there would appear to be an inevitable violation of the statute." The question is whether disclosure of information to the OSI must be restricted if the base cannot assure that the information will not be used for any purposes other than criminal prosecution.

The statutes and rules governing child abuse and neglect investigations do not contain provisions specifically referencing disclosure of information to employers. Rather, it appears that such disclosure falls under the general provisions of R.C. 2151.421 and rule 5101:2-34-38. R.C. 2151.421(H) establishes the confidentiality of the information. Rule 5101:2-34-38 prohibits any dissemination of confidential investigatory information to an agency or organization unless it is determined that the agency or organization has suitable rules or policies governing the dissemination of confidential information. It is, thus, clear that information may not be disseminated if the confidentiality requirements cannot be maintained. There is, however, no blanket prohibition against disclosure of confidential investigatory information to any employer at any time. The question is whether, in a particular case, disclosure can properly be made for purposes authorized in accordance with R.C. 2151.421, R.C. 5153.17, and rule 5101:2-34-38.

It does not appear that the use of confidential investigation materials for a purpose other than criminal prosecution will necessarily constitute a breach of the confidentiality requirement. To the contrary, rule 5101:2-34-38(D)(11) expressly authorizes a PCSA to disseminate information to "[s]ervice providers, to assist in the provision of diagnostic evaluations and/or services to the alleged child victim and his family or caretaker." 9 Ohio Admin. Code 5101:2-34-38(D)(11). If the OSI or another office of the Air Force were to function as a service provider pursuant to this provision, the disclosure of child abuse and neglect investigation information would be permissible in accordance with the provisions of rule 5101:2-34-38(D)(11). *See also* 45 C.F.R. §1340.14(i) (1991).

If the OSI, as a law enforcement agency, receives confidential child abuse and neglect investigation information from the PCSA pursuant to a county plan of cooperation, the OSI is authorized, in accordance with rule 5101:2-34-38(D)(4), to use that information "to assist in a current investigation of a report of alleged child abuse or neglect involving a principal of the case or a report of a missing child about whom relevant information is retained by the PCSA." 9 Ohio Admin. Code

5101:2-34-38(D)(4). As the request letter indicates, it is commonly understood that confidential information obtained in this manner may be used in criminal proceedings brought as a result of the investigation, subject to the limitations set forth in R.C. 2151.421. The statutes and rules do not, however, preclude the use of the information for related purposes other than criminal prosecutions, and it does not appear to be necessary for a PCSA to obtain assurance that the OSI will never use information obtained pursuant to rule 2151:2-34-38(D)(4) for purposes other than criminal prosecutions. *See generally, e.g., Chesky v. United States*, Civil No. 85-0478-B (D. Me. March 1, 1988) (discussing authority of Air Force attorney to disclose allegations of child abuse to various Air Force personnel, when such disclosure resulted in discharge under other than honorable conditions); *United States v. Kimble*, 33 M.J. 284 (C.M.A. 1991); *United States v. Spence*, 29 M.J. 630 (A.F.C.M.R. 1989). *Cf. State ex rel. Renfro v. Cuyahoga County Department of Human Services* (PCSA apparently used a child abuse investigation report as a basis for not returning a foster child to relators' home and for recommending against recertification of the home; no criminal charges were filed, and the court denied a writ of mandamus to permit relators to inspect the investigation report). If concerns exist with respect to the proper use of confidential information for particular types of purposes, those concerns may be addressed in the county plan of cooperation.

Apart from the provisions of a county plan of cooperation, confidential investigatory reports may be disclosed to the OSI pursuant to rule 5101:2-34-38(F), if that disclosure is in the best interest of a child, his family, or caretaker. Rule 5101:2-34-38(F) does not specify the purposes for which the information may be used and thus appears to encompass use for any purpose that serves the best interest of the child. In determining whether there is good cause for disclosing confidential information in particular circumstances, it may be appropriate to consider the possible uses to which the information may be applied. It does not, however, appear that disclosure must be conditioned upon assurance that the information will not be used for any purpose other than criminal prosecution.

Consideration of Other Factors

The fourth question sets forth factors that may affect a determination as to whether good cause for disclosure exists in a particular case – namely, whether the offense occurred on or off a military base; whether the offender is a military member or civilian; and which entity is conducting a preliminary criminal investigation. Such factors should, accordingly, be considered in determinations of "best interest" under rule 5101:2-34-38(F) or disclosure under R.C. 5153.17. In addition, it may be appropriate for the Department, in deciding whether good cause exists for routine disclosure, pursuant to rule 5101:2-34-38 or similar provisions, to consider such factors. It may also be appropriate for ODHS to use its rulemaking authority to establish guidelines for determining, prior to the disclosure of confidential information pursuant to rule 5101:2-34-38, whether a particular agency or organization has rules or policies governing the dissemination of confidential information that are consistent with those contained in rule 5101:2-34-38.

It is, therefore, my opinion, and you are advised, as follows:

1. R.C. 2151.421 does not require that a public children services agency routinely share child abuse and neglect investigation materials with the Air Force Office of Special Investigations, an agency of the federal government.
2. Each report and investigation of alleged child abuse or neglect made under R.C. 2151.421 is confidential and, pursuant to 9 Ohio Admin. Code 5101:2-34-38, the dissemination of such confidential information to an agency or organization is

permitted only if the agency or organization has rules or policies governing the dissemination of confidential information that are consistent with those of rule 5101:2-34-38.

3. A public children services agency may not share child abuse and neglect investigation materials with the Air Force Office of Special Investigations unless the Office has suitable rules or policies governing the dissemination of confidential information.
4. 9 Ohio Admin. Code 5101:2-34-38(D) defines circumstances in which the disclosure of child abuse and neglect investigation information is permitted as a matter of routine. Disclosure to the Air Force Office of Special Investigations may be permitted under these or similar provisions if confidentiality is assured and applicable requirements are satisfied.
5. A public children services agency may, pursuant to [1991-1992 Monthly Record, vol. 1] Ohio Admin. Code. 5101:2-34-71, at 280, include the Air Force Office of Special Investigations as a voluntary subscriber to a county plan of cooperation prepared pursuant to R.C. 2151.421(J), if the Office wishes to be a voluntary subscriber and if the agency determines that the participation of the Office would be appropriate. If the Office has suitable rules or policies governing the use and dissemination of confidential information, the Office may receive investigatory materials as provided in the county plan of cooperation and in 9 Ohio Admin. Code 5101:2-34-38(D)(4).
6. If a county plan of cooperation so provides, child abuse and neglect investigation materials may, pursuant to 9 Ohio Admin. Code 5101:2-34-38(D)(4), be disclosed to the Air Force Office of Special Investigations to assist in a current investigation of a report of alleged child abuse or neglect involving a principal of the case or a report of a missing child.
7. 9 Ohio Admin. Code 5101:2-34-38(F) permits disclosure of child abuse and neglect investigation information when the dissemination of information is believed to be in the best interest of an alleged child victim, his family, or caretaker; a child residing or participating in an activity at an out-of-home care setting where alleged abuse or neglect has been reported; or a child who is an alleged perpetrator. Disclosure to the Air Force Office of Special Investigations may be permitted under this provision if confidentiality is assured and the best interest standard is satisfied on the basis of particular facts.
8. A public children services agency may disclose child abuse and neglect investigation materials to the Air Force Office of Special Investigations when such disclosure is in compliance with R.C. 2151.421, R.C. 5153.17, and 9 Ohio Admin. Code 5101:2-34-38 and is for purposes authorized by those provisions; the agency is not required to obtain assurance that the Office will not use the materials for purposes other than criminal prosecution.