

OPINION NO. 94-046**Syllabus:**

[1993-1994 Monthly Record] Ohio Admin. Code 4501:2-10-06(B) at 1467 restricts all information contained in or processed through the Law Enforcement Automated Data System (LEADS) to the use of law enforcement agencies and criminal justice agencies for the administration of criminal justice. Accordingly, records of information contained in or processed through LEADS, including data entered directly into a LEADS data base, computer tape logs created by LEADS of transactions on LEADS, and hard copies of data on a LEADS data base or from other data bases accessed through LEADS, are not public records subject to disclosure pursuant to R.C. 149.43(B).

To: Charles D. Shipley , Director, Ohio Department of Public Safety,
Columbus, Ohio

By: Lee Fisher, Attorney General, August 5, 1994

You have requested an opinion concerning the release of data contained in and accessed through the Ohio Law Enforcement Automated Data System (LEADS). Your question is as follows:

Is all of the data contained in and accessed through the Ohio LEADS, including technical, statistical and administrative records which can only be created by or accessed through LEADS hardware and software, excepted from release under the Ohio Public Records Act by virtue of OAC 4501:2-10-06(B)?

Discussions with representatives of the State Highway Patrol reveal that by "data contained in and accessed through" LEADS you mean all data entered into LEADS, accessed through LEADS, or created by LEADS itself.

Law Enforcement Automated Data System (LEADS)

R.C. 5503.10 establishes "a program for administering and operating a law enforcement automated data system, to be known as LEADS, providing computerized data and communications to the various criminal justice agencies of the state." The statute designates the Superintendent of the State Highway Patrol as the administrator of the program, and requires the Superintendent to "adopt rules under Chapter 119. of the Revised Code establishing fees and guidelines for the operation of and participation in the LEADS program." *Id.* Such rules "shall include criteria for granting and restricting access to information maintained in LEADS." *Id.* The LEADS program thus comprises a computerized network of information and the methods and rules for using the network.¹

¹ The computer hardware that contains LEADS is owned and maintained by the Department of Administrative Services. However, the State Highway Patrol is the agency that maintains management control over the computer system. Management of the system includes "planning for necessary hardware and software, funding, training, record validations, quality control, dissemination of manuals and other publications, security, audits and adherence to LEADS rules." [1993-1994 Monthly Record] Ohio Admin. Code 4501:2-10-01(G) at 1465.

The information available through LEADS is from several different data bases. Some of the information is actually entered directly into LEADS and becomes a part of the system. These data bases, known as "LEADS specific" files, include stolen vehicle and license files, "wanted," missing, and unidentified persons files, towed vehicles files, and road condition and weather files. Other data bases, while not directly entered into LEADS as part of that system, are accessible through LEADS. For example, LEADS provides access to the computerized criminal history files of the Ohio Bureau of Criminal Identification and Investigation. Additionally, the National Crime Information Center (NCIC), a computerized data base operated by the Federal Bureau of Investigation, 28 C.F.R. §20.31(a) (1993), is available through LEADS. [1993-1994 Monthly Record] Ohio Admin. Code 4501:2-10-09 at 1469. LEADS also provides access to the motor vehicle registration and operators license information of other states through the National Law Enforcement Telecommunications System (NLETS). [1993-1994 Monthly Record] Ohio Admin. Code 4501:2-10-08 at 1468. Thus, LEADS offers access to a large volume of information in addition to the information entered into LEADS data bases.

Additionally, LEADS itself creates data concerning the use of the system. Each transaction on LEADS requires the operator to enter a password that identifies that operator. [1993-1994 Monthly Record] Ohio Admin. Code 4501:2-10-06(D) at 1467. This feature controls access to the system by linking each transaction with the operator who performed it. Each transaction, labelled with the password of the operator, is "tape-logged."² *Id.*

The Public Records Law

Your question concerning the data maintained in or accessed through LEADS is whether such data is excepted from release under the Ohio Public Records Act by an administrative rule, specifically [1993-1994 Monthly Record] Ohio Admin. Code 4501:2-10-06(B) at 1467. By use of the term "Ohio Public Records Act" it is understood that you mean R.C. 149.43, which mandates the availability of public records. It provides that "[a]ll public records shall be promptly prepared and made available for inspection to any person at all reasonable times during regular business hours." A "[p]ublic record" is defined, in relevant part, as "any record that is kept by any public office ... except ... records the release of which is prohibited by state or federal law." R.C. 149.43(A). "Record[]" is broadly defined to include "any document, device, or item, regardless of physical form or characteristic, created or received by or coming under the jurisdiction of any public office³ 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) (footnote added). Thus, any record kept by the State Highway Patrol, unless encompassed by one of the exceptions provided by R.C. 149.43, is a public record subject to disclosure pursuant to R.C. 149.43(B).

Information Contained in or Accessed Through LEADS that Has Taken the Form of a Record as Defined by R.C. 149.011(G)

Your question, however, does not refer to a specific type of record, but to "data" accessed through LEADS. "Data" is "[i]nformation, esp. information organized for analysis or

² Representatives of the State Highway Patrol have explained that the "tape-log" is an actual computer tape that records each transaction on LEADS.

³ Pursuant to R.C. 149.011(A), a "public office" includes "any state agency, public institution, political subdivision, or any other organized body, office, agency, institution, or entity established by the laws of this state for the exercise of any function of government." The State Highway Patrol, established by R.C. 5503.01, is clearly a "public office."

used as the basis for a decision." *The American Heritage Dictionary* 366 (2d college ed. 1985). "Information," in and of itself, does not constitute a "record" as defined by R.C. 149.011(G). In *State ex rel. Fant v. Mengel*, 62 Ohio St. 3d 455, 584 N.E.2d 664 (1992), the court found that a request for "the full-name [sic] and title of the person in respondent Mengel's office that was responsible for receiving and filing the original record in Case No. 89-1168 on appeal from the Franklin County Court of Appeals" was a request for information and not a request for a document, device, or item. The court held that since the information sought was not a "record" as defined by R.C. 149.011, it was not a public record subject to disclosure under R.C. 149.43.

The LEADS system serves as both a repository for information collected and entered into the system by participants in LEADS and an instrument for accessing a variety of information that is not entered directly into LEADS but is available through LEADS from other data bases. In order to answer your question, therefore, it is important to determine what data, or information, contained in or accessed through LEADS, constitutes a record, as defined by R.C. 149.011, that might be subject to disclosure.

There are three general types of information that are contained in or accessed through LEADS: Data that is actually entered directly into LEADS and thus becomes a part of a LEADS data base; data created by LEADS in the form of a computer tape log or a "hard copy";⁴ and data that can be accessed through LEADS from a data base that is not part of LEADS. Data that is actually entered into LEADS as a part of the LEADS data base clearly becomes a record as defined by R.C. 149.011(G). That information, whether created by, received by, or coming under the jurisdiction of the State Highway Patrol is entered into a LEADS data base where it resides for the purpose of documenting the organization, functions, policies, decisions, procedures or other activities of the State Highway Patrol with respect to LEADS. The fact that the information is stored in the computer system does not affect its status as a record as defined by R.C. 149.011(G). See *State ex rel. Athens Cty. Property Owners Ass'n, Inc. v. Athens*, 85 Ohio App. 3d 129, 619 N.E.2d 437 (Athens County 1992) (records normally stored on electronic medium are subject to disclosure pursuant to R.C. 149.43(B)).

Likewise, data created by LEADS in the form of a computer tape log or a hard copy of information contained within a LEADS data base or from another data base accessed through LEADS is a record pursuant to R.C. 149.011. Both items, the computer tape log and the hard copy, are created by LEADS under the jurisdiction of the State Highway Patrol, and both items serve to document the procedures and operations of the State Highway Patrol with respect to LEADS. Additionally, the computer tape logs and hard copies generated by the use of LEADS by a LEADS participant serve to document the procedures and operations of the office of the LEADS participant as well.

Data from other data bases that are not part of LEADS but that are accessed through LEADS takes two forms. One form is the appearance of data on the computer screen when accessed by a LEADS operator. At this point, the data cannot be considered a record since it is merely information that is available to the LEADS operator. Such information does not "serve to document" the organization, functions, policies, decisions, procedures, operations, or other activities of any public office. However, when the information derived from the screen is printed in hard copy or transferred to the computer tape log, it becomes an item that

⁴ "Hard copy" is defined as the "[r]eadable printed copy of the output of a machine, as a computer." *The American Heritage Dictionary* 594 (2d college ed. 1985).

documents the activity of the State Highway Patrol with respect to LEADS or the activity of the office of the LEADS participant.⁵

In summary, data that is entered directly into LEADS where it resides in a LEADS data base is a record as defined by R.C. 149.011. Additionally, computer tape logs created by LEADS of data actually in a LEADS data base or from other data bases accessed through LEADS and retained under the authority of the State Highway Patrol are records, as are hard copies of data in LEADS itself or from other data bases that are accessed through LEADS. Further, these records are "[p]ublic record[s]" as defined in R.C. 149.43(A), and thus are subject to disclosure pursuant to R.C. 149.43(B), unless one of the exceptions to the definition of "[p]ublic record" enumerated in R.C. 149.43(A) is applicable.

**[1993-1994 Monthly Record] Ohio Admin. Code 4501:2-10-06(B) at 1467
Excepts from Disclosure Pursuant to R.C. 149.43(B) All Records Comprising
Information Contained in or Accessed Through LEADS**

R.C. 149.43(A) excludes from the definition of public record "records the release of which is prohibited by state or federal law."⁶ The question is, therefore, whether [1993-1994 Monthly Record] Ohio Admin. Code 4501:2-10-06(B) at 1467 is such a law.

Rule 4501:2-10-06(B) provides, in relevant part, as follows:

Messages and/or throughput of any kind what-so-ever accessed through LEADS shall be restricted to the use of duly authorized law enforcement and/or criminal justice agencies for the administration of criminal justice[.] The data shall not be sold, transmitted, or disseminated to any nonlaw enforcement agency, noncriminal justice agency or unauthorized person.

Rule 4501:2-10-06(B) was enacted pursuant to the authority granted by R.C. 5503.10, which expressly authorizes the Superintendent of the State Highway Patrol to establish rules granting

⁵ An analogy may be drawn between the receipt of information from a data base that is not part of LEADS through the use of a LEADS computer and the receipt of information from a telephone conversation. A telephone conversation may provide a person with valuable information, but that information, unless recorded by audiotape or documented in another fashion, is not "a document, device, or item" as defined in R.C. 149.011 and is, therefore, not a record. Likewise, as long as the information appearing on a LEADS computer screen is not entered into a LEADS data bank, printed out in hard copy, or transferred to a tape log, it is merely information that has not taken the form of a record.

⁶ Although not relevant to the question addressed in this opinion, there are other provisions of law that except records composed of information accessed through LEADS from disclosure pursuant to R.C. 149.43(B). See, e.g., R.C. 109.57(D) (providing that certain information collected pursuant to R.C. 109.57(A) and (F) concerning criminal histories does not constitute a public record pursuant to R.C. 149.43); but see 2 Ohio Admin. Code 109:05-1-01 (permits the limited disclosure of criminal records maintained at the Bureau of Criminal Identification and Investigation). See also 42 U.S.C. §3789g (1988) (providing for the confidentiality of certain criminal history information); 28 C.F.R. §20.21(b) (1993) (limiting the dissemination of criminal history information by certain state and local agencies and individuals collecting, storing, or disseminating criminal history record information).

and restricting access to information maintained in LEADS. Thus, rule 4501:2-10-06(B) is a state law for purposes of R.C. 149.43(A). See *Doyle v. Ohio Bureau of Motor Vehicles*, 51 Ohio St. 3d 46, 554 N.E.2d 97 (1990) (syllabus, paragraph one) ("[a]dministrative rules enacted pursuant to a specific grant of legislative authority are to be given the force and effect of law").

Rule 4501:2-10-06(B) clearly restricts "[m]essages and/or throughput of any kind whatsoever" to the use of duly authorized law enforcement and/or criminal justice agencies for the administration of criminal justice. "Throughput" is defined by the dictionary as "the quantity or amount of raw material processed within a given time, esp. the work done by an electronic computer in a given period of time." *Random House Dictionary of the English Language* 1480 (Unabridged ed. 1973). Further, the rule specifically prohibits the sale, transmission, or dissemination of that data to any nonlaw enforcement agency, noncriminal justice agency or unauthorized person.⁷

Thus, pursuant to rule 4501:2-10-06(B), access to *all* information contained in or processed through LEADS is limited to the use of law enforcement agencies and criminal justice agencies for the administration of criminal justice. Accordingly, when such information takes the form of a "[r]ecord" as defined by R.C. 149.011, it is not a "[p]ublic record" as defined by R.C. 149.43(A) and is not subject to disclosure under R.C. 149.43(B). See, e.g., 1990 Op. Att'y Gen. No. 90-007 (syllabus, paragraph one) ("[w]here 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"). Data that is entered directly into a LEADS data base, computer tape logs created by LEADS of transactions on LEADS, including data on the LEADS data base and data accessed from other data bases through LEADS, and hard copies of data on the LEADS data base and from other data bases accessed through LEADS are therefore not public records subject to disclosure pursuant to R.C. 149.43(B).

Conclusion

Based upon the foregoing, it is my opinion, and you are hereby advised, that [1993-1994 Monthly Record] Ohio Admin. Code 4501:2-10-06(B) at 1467 restricts all information contained in or processed through the Law Enforcement Automated Data System (LEADS) to the use of law enforcement agencies and criminal justice agencies for the administration of criminal justice. Accordingly, records of information contained in or processed through LEADS, including data entered directly into a LEADS data base, computer tape logs created by LEADS of transactions on LEADS, and hard copies of data on a LEADS data base or from other data bases accessed through LEADS, are not public records subject to disclosure pursuant to R.C. 149.43(B).

⁷ A violation of [1993-1994 Monthly Record] Ohio Admin. Code 4501:2-10-06(B) can result in a denial of access to LEADS. See 12 Ohio Admin. Code 4501:2-10-11(A).

OPINION NO. 94-047

Syllabus:

An individual who serves as part-time health commissioner of two different counties may not serve in both such capacities on a joint district solid waste management policy committee. Instead, to avoid a conflict of interests, the