

OPINION NO. 81-043**Syllabus:**

A "News Hook" maintained by a city police department is not a public record under the terms of R.C. 149.43, and need not, therefore, be disclosed to all members of the public for any reason whatsoever.

To: Vincent E. Gilmartin, Mahoning County Pros. Atty., Youngstown, Ohio
By: William J. Brown, Attorney General, July 23, 1981

I have before me your letter of July 2, 1981, in which you request my opinion concerning "the propriety of the Youngstown Police Department preventing access to the 'News Hook' to private individuals who are attempting to employ the same for the purpose of soliciting business accounts."

It is my understanding that this request arises in the context of the following facts. For many years, the Youngstown Police Department has operated a "News Hook" as a source for local news media concerning crimes occurring in the Youngstown area. The "News Hook" is a ledger which contains reports of crimes and police investigations, such as assaults, burglaries, casualties and missing persons. Entries remain on the ledger approximately two weeks, after which time they are destroyed. In recent months, the Police Department has received complaints from citizens who were contacted by various commercial enterprises, e.g., burglar alarm companies, after their names appeared on the "News Hook" as crime victims. In response to these complaints, the Chief of Police issued an order which prohibited making available the "News Hook" to any company for business purposes. It was this order which prompted your request for an opinion.

The analysis of your question must focus on Ohio's public records statute, R.C. 149.43, which requires that public records be available for inspection by members of the general public. A "public record" is defined in R.C. 149.43(A)(1) as "any record that is required to be kept by any governmental unit" (emphasis added). The meaning of the phrase "required to be kept" was discussed in the case of

Dayton Newspapers, Inc. v. Dayton Daily News, 45 Ohio St. 2d 107, 109, 341 N.E.2d 576, 577 (1976), wherein the Court stated that a record is "required to be kept" if "but for its keeping the governmental unit could not carry out its duties and responsibilities; that the raison d'etre of such record is to assure the proper functioning of the unit." See also 1980 Op. Att'y Gen. No. 80-096. It is my understanding that the "News Hook" is maintained only for the convenience of reporters, and that it is not designed to serve, nor does it serve, as an aid to the police in performing their responsibilities. Thus, the "News Hook" is not a record the maintenance of which is necessary to the Youngstown Police Department's execution of its duties and responsibilities and, therefore, is not a record which is "required to be kept" as that term is used in R.C. 149.43. Consequently, the "News Hook" is not a public record, within the meaning of R.C. 149.43, which must be disclosed to the general public.

Parenthetically, it should be mentioned that the foregoing analysis is extremely limited in its application. One must remain mindful of the fact that R.C. 1347.05(H) requires state and local agencies to "[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" (emphasis added). As I indicated in Op. No. 80-096, supra, the operation of this provision effectively obviates an extended determination of whether the record under consideration is "required to be kept" within the meaning of R.C. 149.43. If an agency is in compliance with R.C. 1347.05(H), it follows that any record maintained by said agency is one necessary to the function performed by that agency and, hence, a public record. A local police department, however, is one of the very few governmental agencies that is not subject to the provisions of R.C. 1347.05(H). R.C. 1347.04 provides in part as follows:

(A)(1) Except as provided in division (A)(2) of this section, the following are exempt from the provisions of this chapter:

(a) Any state or local agency, or part of a state or local agency, that performs as its principal function any activity relating to the enforcement of the criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend criminals;

. . . .

There can be little question that a city police department is a local agency that performs as its principal function activities "relating to the enforcement of the criminal laws."

It is the operation of the foregoing provision that permits a city police department to contend, and me to conclude, that a record such as the "News Hook" is unrelated to the function performed by the department and, consequently, one that does not qualify as a public record under the terms of R.C. 149.43. Since a city police department is not subject to the requirements of R.C. Chapter 1347, the Privacy Act, and since a "News Hook" is not, therefore, a "record required to be kept," there does not appear to be any restriction against the police department permitting inspection of the "News Hook" by some, but not by all, members of the public.¹

It is, therefore, my opinion, and you are advised, that a "News Hook" maintained by a city police department is not a public record under the terms of R.C. 149.43, and need not, therefore, be disclosed to all members of the public for any reason whatsoever.

¹It should be noted, however, that where an agency and personal information maintained by that agency are subject to the provisions of the Privacy Act, disclosure of the personal information contained in a record which is not a public record may result in a violation or an alleged violation of R.C. 1347.05(H) of the Privacy Act.