

**OPINION NO. 83-071****Syllabus:**

1. Pursuant to 7 Ohio Admin. Code 5101:1-1-03 and related statutory provisions, a county department of welfare is prohibited from disclosing to law enforcement personnel personal information about applicants for or recipients of Aid to Families with Dependent Children or poor relief, unless such law enforcement personnel are prosecuting public fraud or seeking child support, or the applicant or recipient has expressly consented in writing to the disclosure. In addition, the release must be for a purpose directly connected with the administration of a public assistance program outlined in Ohio Admin. Code Division 5101:1, and the agency to which the information is released must be subject to standards of confidentiality substantially comparable to those established in rule 5101:1-1-03.
2. Pursuant to [1982-1983 Monthly Record] Ohio Admin. Code 5101:4-1-13 at 308, a county department of welfare is prohibited from disclosing to law enforcement personnel personal information about applicants for or recipients of food stamps unless such law enforcement personnel are directly connected with the enforcement of the Food Stamp Act or regulations, other federal assistance programs, or general relief programs that are subject to joint processing requirements, or unless the applicant or recipient has executed a written waiver consenting to the release.
3. If a county department of welfare has filed a report with the county auditor pursuant to the provisions of R.C. 329.091, any public official or public body requiring such information for the proper discharge of official duties, and any elector of the county, in accordance with the requirements of R.C. 329.091, may determine from the report the names of recipients of poor relief and the amount of poor relief paid to each.

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**To: Roger L. Kline, Pickaway County Prosecuting Attorney, Circleville, Ohio**  
**By: Anthony J. Celebrezze, Jr., Attorney General, December 1, 1983**

I have before me your request for my opinion on whether the county department of welfare may release certain client information to local law enforcement personnel. I understand from the director of the county welfare department that the department is concerned about providing information to law enforcement officers regarding clients' previous and current addresses and the names of individuals with whom clients are living, when such information is not related to welfare fraud investigations. I understand, further, that the information in question is contained in public assistance records, specifically records

documenting the application for, or receipt of Aid to Families with Dependent Children (AFDC), food stamps, and poor relief.

Access to the records of governmental units is governed by R.C. 149.43. Division (B) of R.C. 149.43 states:

All public records shall be promptly prepared and made available to any member of the general public at all reasonable times for inspection. Upon request, a person responsible for public records shall make copies available at cost, within a reasonable period of time. In order to facilitate broader access to public records, governmental units shall maintain public records in such a manner that they can be made available for inspection in accordance with this division.

Thus, if the client information in question is contained in a public record, it must be made available to anyone who requests access to such information.

A "public record" is defined as:

any record that is required to be kept by any governmental unit, 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, 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). A county department of welfare is part of the county government, see R.C. 329.01; R.C. 329.02; R.C. 329.04; 1981 Op. Att'y Gen. No. 81-082, and, thus, is a governmental unit for purposes of R.C. 149.43. I assume that the department's keeping of the records in question is necessary to the execution of its duties and responsibilities, and, thus, that the records are "required to be kept" within the meaning of R.C. 149.43. See 1980 Op. Att'y Gen. No. 80-096. See also R.C. 5107.05; R.C. 5113.04. An assertion by the department that the records are not required to be kept, and thus are not public records, would be an admission that the department is in violation of R.C. 1347.05(H).<sup>2</sup> See Op. No. 80-096.

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<sup>1</sup> Aid to Families with Dependent Children and food stamps are federal programs which are administered in this state by the Ohio Department of Public Welfare. See R.C. 329.042; R.C. 5101.16; R.C. 5101.18; R.C. 5107.02(A) and (G). The various county welfare departments distribute these funds on the local level. See R.C. 329.04; R.C. 329.042; R.C. 329.05; R.C. 5101.02; R.C. 5101.161. The state Department of Welfare generally administers the distribution of poor relief, see R.C. 5113.09, although each county welfare department has primary responsibility for administering poor relief. See R.C. 329.04(C); R.C. Chapter 5113.

<sup>2</sup> R.C. 1347.05(H) requires state and local agencies maintaining a personal information system 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 by statute, ordinance, code, or rule, and eliminate personal information from the system when it is no longer necessary and relevant to those functions." See R.C. 1347.01(E) (defining "personal information"); R.C. 1347.01(F) (defining "system"). A public official, employee, or other person who purposely refuses to comply with R.C. 1347.05(H) is guilty of a minor misdemeanor. R.C. 1347.99. Civil damages may also be sought by and awarded to anyone who is harmed by the intentional maintenance of irrelevant or outdated personal information. R.C. 1347.10.

As described by the county welfare director, the records in question are not medical records, records pertaining to adoption, probation, or parole proceedings, trial preparation records, or confidential law enforcement investigatory records. See R.C. 149.43(A)(2)-(4). It does, however, appear that the release of the records under the circumstances you have described is prohibited by law.

7 Ohio Admin. Code 5101:1-1-03, which deals with public assistance programs, including the AFDC and poor relief programs, see 7 Ohio Admin. Code Division 5101:1, reads in part:

(A) The right of privacy means that the individual controls the information held by the Ohio Department of Public Welfare or County Welfare Departments. All uses of personal information should be examined with reference to this concept.

(B) All information and records concerning an applicant, recipient, or former recipient are to be safeguarded. No information is to be released to anyone (except the applicant, recipient, or former recipient) outside the agency unless the request clearly meets the three requirements below:

(1) No employee or representative of the Ohio Department of Public Welfare or County Welfare Departments may disclose any information concerning an applicant, recipient, or former recipient without the client's expressed consent. The family or individual involved must be notified promptly of any requests for information from an outside source. Expressed and informed consent in writing to release the specified information must be obtained in order to release that information to the outside agency or representative of the outside agency. This requirement does not apply to a provider of medical assistance seeking information from data that he/she has furnished, to the Auditor of the State of Ohio, while performing his/her statutory duties, to the General Accounting Office, Health, Education and Welfare/Social and Rehabilitation Service and Health, Education and Welfare/Audit Office, while performing their statutory and regulatory duties or to law enforcement agencies prosecuting public fraud or seeking child support; and

(2) The information can only be released to agencies or representatives of agencies for purposes directly connected with the administration of the Public Assistance Program. Such purposes include establishing eligibility, determining amount of assistance, and providing services for applicants and recipients; and

(3) The information can only be released to agencies or representatives of agencies who are subject to standards of confidentiality and safeguarding information which are substantially comparable to those established in this rule. This interpretation permits information regarding December, 1973 grant amounts, outside income, and living arrangements of former adult category recipients converted to Supplemental Security Income in January, 1974 to be released to social security district offices. Likewise, the specific amount of the Aid for Dependent Children grant allocated to a disabled child may be released to the social security district office when that child is being transferred to Supplemental Security Income.

(C) The following requirements (which must be explained at the time of application for assistance or services) are included to protect the applicant's, recipient's, or former recipient's rights to control personal data.

(1) Whenever an applicant, recipient or former recipient is asked to supply personal data to the county welfare department or Ohio Department of Public Welfare, the legal requirements for providing or not providing such data must be explained to him/her.

(2) Upon the request of any applicant, recipient or former recipient, the state or county agency must make all data collected about that individual available to him/her, except that the individual

shall not have access to medical, psychiatric and psychological reports, unless they are a part of the hearing process.

In addition, the agency must supply an interpretation of the data if it is not readily understandable. If the individual feels that any data is incomplete or inaccurate he/she has the right to include additional information in his/her files.

(3) Unless the informed and expressed consent of the applicant, recipient or former recipient has been obtained in writing, the Ohio Department of Public Welfare and County Welfare Departments must insure that no use is made of individually identifiable data beyond the purpose of furnishing public assistance or social services to that individual. The data cannot be used for any purpose not previously expressed to the individual without his/her informed and explicit consent.

(4) Upon an applicant's, recipient's or former recipient's request, the state or county welfare department must inform the individual of all uses of personal data, all representatives of outside agencies having access to the data, and all organizations who have obtained any data about that individual.

(5) Upon any request for individual data through compulsory legal process, the recipient, applicant, or former recipient must be immediately informed of such request. In addition, the Department must inform the court of the statutory and regulatory provisions against disclosure of information. If the court still seeks the information, and if the information is not protected by any other privilege recognized by law, the agency will furnish the specified information to the court itself along with the Department's policies for safeguarding that information. At the same time, the agency must notify the individual that the information has been furnished to the court and must supply duplicate copies to that individual of the information so furnished.

(6) The following elements are included in the concept of informed and expressed consent:

(a) The notice to the individual must specify the information sought;

(b) The notice to the individual must specify the purpose for which the information is sought;

(c) The notice to the individual must contain the consequences of releasing or not releasing the information;

(d) The individual must have a reasonable amount of time to decide whether to release the information (e.g. seven (7) days between the receipt of notice and the necessary response). If the individual fails to respond, the information cannot be released.

(e) No pressure whatsoever can be used on the individual to insure that a release be signed;

(f) There must be a release of information form signed for each occasion the data is released;

(g) The release form must specify:

(i) The agency and the representative requesting the information;

(ii) The information requested;

(iii) The intended use of the information;

(iv) The date of the request;

(v) The signature of the applicant, recipient or former recipient.

(h) A copy of this form must be included in the individual's file.

[1982-1983 Monthly Record] Ohio Admin. Code 5101:4-1-13 at 308, concerning the administration of the food stamp program, reads in part:

(C) The county agency shall restrict the use on [sic] disclosure of information obtained from applicant households to persons directly

connected with the administration or enforcement of the provisions of the Food Stamp Act or regulations or with other federal or federally aided means tested assistance programs such as Titles IV-A (AFDC), XIX (medicaid), XVI (SSI), or with general relief programs that are subject to the joint processing requirements. Some examples are outlined below:

(1) Names and addresses of participating households may be made available to persons directly connected with nutrition education and program information efforts.

(2) The county welfare department shall cooperate in furnishing needed information to the federal bureau of investigation or other law enforcement agency, if the investigation concerns a household fraudulently obtaining coupons or otherwise violating the Food Stamp Act or regulations.

(3) County welfare departments shall furnish relevant household information to local county prosecutors investigating possible food stamp fraud.

(4) County welfare departments shall furnish relevant household information to the immigration and naturalization service (INS) investigating the presence of illegal aliens in the county.

(D) Except as provided for in paragraph (C) of this rule, a waiver signed by the recipient on whom the information is requested must be secured by the county welfare department and retained in its files. The waiver shall be dated, include to whom the information is to be released, state what information is to be released (either itemizing or stating a general release of any information requested), and the period of time the release is intended to cover.

See [1981-1982 Monthly Record] Ohio Admin. Code 5101-9-35 at 1046 (setting forth restrictions on the Ohio Department of Public Welfare's disclosure of personal information concerning applicants and recipients of public assistance, including AFDC, poor relief, and food stamps). See also R.C. 1347.01(E); R.C. 1347.10(A)(2); [1981-1982 Monthly Record] Ohio Admin. Code 5101-9-30(L) at 1044; [1981-1982 Monthly Record] Ohio Admin. Code 5101-9-44 at 1050.

Administrative rules, properly promulgated, have the force and effect of law. Parfitt v. Columbus Correctional Facility, 62 Ohio St. 2d 434, 406 N.E.2d 528 (1980), cert. denied, 449 U.S. 1061 (1980); Kroger Grocery & Baking Co. v. Glander, 149 Ohio St. 120, 77 N.E.2d 921 (1948); State ex rel. Kildow v. Industrial Commission, 128 Ohio St. 573, 192 N.E. 873 (1934). Thus, pursuant to rule 5101:1-1-03, a county department of welfare is prohibited from disclosing to law enforcement personnel personal information about applicants for or recipients of AFDC or poor relief, including names, addresses, and living arrangements, unless such law enforcement personnel are prosecuting public fraud or seeking child support, or the applicant or recipient has expressly consented in writing to the disclosure. See rule 5101:1-1-03(C)(6). In addition, the release must be for a purpose directly connected with the administration of a public assistance program outlined in Ohio Admin. Code Division 5101:1 and the agency to which the information is released must be subject to standards of confidentiality substantially comparable to those established in rule 5101:1-1-03. See R.C. 329.041. Pursuant to rule 5101:4-1-13, a county department of welfare is prohibited from disclosing to law enforcement personnel personal information about applicants for or recipients of food stamps unless such law enforcement personnel are directly connected with the enforcement of the Food Stamp Act or regulations, other federal assistance programs, or general relief programs that are subject to joint processing requirements, or unless the applicant or recipient has executed a written waiver consenting to the release. For example, information may be provided to law enforcement agencies which are investigating a household fraudulently obtaining food stamps or otherwise violating the Food Stamp Act or regulations even if no waiver is obtained. To the extent that the release of records containing personal information about applicants for or recipients of AFDC, poor relief, or food stamps is prohibited by law, such records are not public records for purposes of R.C. 149.43.

Rule 5101:4-1-13 was promulgated in order to implement R.C. 329.04 and R.C. 329.042, concerning the administration of the food stamp program. See R.C. 5101.02. Rule 5101:1-1-03 was adopted in accordance with R.C. 5113.09(A), which empowers the Department of Public Welfare to "[m]ake reasonable rules for the effective administration of poor relief," and R.C. 5107.02, which empowers the State Department of Public Welfare to "establish and enforce reasonable rules governing the custody, use, and preservation of the records, papers, files, and communications of the department, the county administration for aid to dependent children, and all other state and county officials participating in the administration of [the aid to dependent children program]."

R.C. 5107.02 further provides that:

No person shall, except for purposes directly concerned with the administration of public assistance, and in accordance with the rules of the department solicit, disclose, receive, make use of, or authorize, knowingly permit, participate in, or acquiesce in the use of, any list of or names of, persons applying for or receiving such assistance, directly or indirectly derived from the records, papers, files, or communications of the department or county administrations or agencies thereof, or acquired in the course of the performance of official duties.

R.C. 5107.02 also governs the disclosure of information about applicants and recipients to other government agencies, departments, and officers, and requires that such agencies, departments and officers "adopt rules necessary to prevent the publication of lists thereof or the disclosure of information concerning applicants and recipients or the use of such lists or information for purposes not directly connected with the administration of aid to dependent children." See R.C. 5101.181 (for purposes of determining eligibility, the Department of Public Welfare shall furnish the names and social security numbers of applicants for AFDC and poor relief to the Department of Administrative Services, the Bureau of Workers' Compensation, the Bureau of Employment Services, and each state retirement board, and each shall inform the Director as to the amount of wages or benefits being received by the applicant and his most recent home address; BES must also furnish information as to whether the applicant has refused an offer of employment); R.C. 5107.031.

The provisions above operate to bring Ohio into compliance with federal law, which requires states, as a continuing prerequisite to the receipt of federal funds for public assistance, to provide, inter alia, safeguards limiting the use or disclosure of information concerning assistance applicants or recipients to certain specified purposes, generally related to the administration of the public assistance programs. See, e.g., 7 U.S.C. §2020(e)(8) (1982) (food stamps); 42 U.S.C. §602(a)(9) (Supp. V 1981) (AFDC); 45 C.F.R. §205.50 (specifically subjects law enforcement officials to the same restriction to which the general public is subject in obtaining information concerning assistance applicants and recipients). See generally R.C. 5107.02; 1981 Op. Att'y Gen. No. 81-051.

I draw your attention to R.C. 329.091, which provides that the various local entities which administer AFDC and poor relief "may file a report with the auditor of the county listing the names of all recipients to whom such agency has granted, paid, or authorized payment of public assistance during the preceding fiscal quarter year of such agency and the amounts paid to each." The public assistance examining committee, composed of specified county officers, examines these reports, and may examine other information contained in the records of the public assistance agencies, "to determine whether or not any such grants or payments of public assistance funds have been fraudulently made or received, or are in violation of law or the regulations of the department of public welfare." If there is reasonable cause to so believe, the committee must certify the determination to the prosecuting attorney and the Director of Public Welfare, who must take appropriate action. R.C. 329.091 further provides:

The reports and case records of such public assistance agencies pertaining to recipients of public assistance shall be open to examination by the prosecuting attorney and shall be made available if required as evidence in any action or proceeding for the enforcement of liability for support of any recipient of public assistance, for collection or recovery of public assistance funds, and for prosecution for any violation of the laws and regulations pertaining thereto. The reports of any agency, required by this section, shall be open to examination by the attorney general, auditor of state, and federal and state legislative representatives, commissions, committees, and their designated representatives, and any other public official or public body required to have such information for the proper discharge of official duties.

The report filed in the office of the county auditor as required by this section shall be open to examination by any elector of the county who first signs his name and gives the reason in writing for such examination and files said request with the county auditor.

No person, firm, association, corporation, or other agency shall solicit, disclose, receive, use, or authorize, participate in, or acquiesce in the use of any lists or names of any recipients of aid for commercial or political purposes of any nature or for any purpose not directly connected with the administration of public assistance. (Emphasis added.)

The above-quoted paragraphs of R.C. 329.091 appear to be in conflict with the more stringent disclosure restrictions of R.C. 5107.02 and rule 5101:1-1-03. I note that, in 1980 Op. Att'y Gen. No. 80-036, the adequacy of the restrictions in R.C. 329.091 was questioned in light of the federal limitations on disclosure, such as those found in 42 U.S.C. §602(a)(9) and 45 C.F.R. §205.50.

The last paragraph of R.C. 329.091 appears to be based upon 42 U.S.C. §1306a (Supp. V 1981) which reads:

No State or any agency or political subdivision thereof shall be deprived of any grant-in-aid or other payment to which it otherwise is or has become entitled pursuant to [inter alia, the AFDC program], by reason of the enactment or enforcement by such State of any legislation prescribing any conditions under which public access may be had to records of the disbursement of any such funds or payments within such State, if such legislation prohibits the use of any list or names obtained through such access to such records for commercial or political purposes.

This provision is less restrictive than 42 U.S.C. §602(a)(9) as to the disclosure of information. Section 602(a)(9) was deemed to prevail over §1306a in Michigan Welfare Rights Organization v. Dempsey, 462 F.Supp. 227 (E.D. Mich. 1978), in which the court intimated that §1306a has been rendered inoperative. In light of the clear language of R.C. 5107.02 and rule 5101:1-1-03, as well as that of 42 U.S.C. §602(a)(9) and the corresponding federal regulations, and considering Op. No. 80-036 and Michigan Welfare Rights Organization, I cannot advise you that R.C. 329.091 or 42 U.S.C. §1306a permits the disclosure of personal information about applicants or recipients of AFDC to law enforcement personnel under the circumstances described in your request.

There are no federal restrictions on the disclosure of personal information concerning applicants for, or recipients of, poor relief. Rule 5101:1-1-03 set forth above, does extensively restrict the disclosure of such information. An administrative rule, however, has no effect if it is in conflict with statutory language governing the same subject. See Kroger Grocery & Baking Co. v. Glander. Thus, to the extent that rule 5101:1-1-03 conflicts with R.C. 329.091 with regard to the disclosure of information concerning recipients of poor relief, it is of no effect. I note that the information which may be obtained under R.C. 329.091 by a public official or a public body in need of such information in order to execute official

duties or by an elector is only that found in the report filed in the county auditor's office by the local administrator of poor relief. See generally Op. No. 80-036 (a county department of welfare is not required to file a report with the county auditor under R.C. 329.091). Pursuant to R.C. 329.091, this information is limited to the names of recipients of poor relief and the amount of poor relief they are receiving.

In conclusion, it is my opinion, and you are so advised, that:

1. Pursuant to 7 Ohio Admin. Code 5101:1-1-03 and related statutory provisions, a county department of welfare is prohibited from disclosing to law enforcement personnel personal information about applicants for or recipients of Aid to Families with Dependent Children or poor relief, unless such law enforcement personnel are prosecuting public fraud or seeking child support, or the applicant or recipient has expressly consented in writing to the disclosure. In addition, the release must be for a purpose directly connected with the administration of a public assistance program outlined in Ohio Admin. Code Division 5101:1, and the agency to which the information is released must be subject to standards of confidentiality substantially comparable to those established in rule 5101:1-1-03.
2. Pursuant to [1982-1983 Monthly Record] Ohio Admin. Code 5101:4-1-13 at 308, a county department of welfare is prohibited from disclosing to law enforcement personnel personal information about applicants for or recipients of food stamps unless such law enforcement personnel are directly connected with the enforcement of the Food Stamp Act or regulations, other federal assistance programs, or general relief programs that are subject to joint processing requirements, or unless the applicant or recipient has executed a written waiver consenting to the release.
3. If a county department of welfare has filed a report with the county auditor pursuant to the provisions of R.C. 329.091, any public official or public body requiring such information for the proper discharge of official duties, and any elector of the county, in accordance with the requirements of R.C. 329.091, may determine from that report the names of recipients of poor relief and the amount of poor relief paid to each.