

**Note from the Attorney General's Office:**

1988 Op. Att'y Gen. No. 88-103 was overruled in part by  
1998 Op. Att'y Gen. No. 98-029.

**OPINION NO. 88-103****Syllabus:**

1. An application to the county veterans service commission for assistance under R.C. Chapter 5901 is a public record.
2. Any member of the public may inspect and copy each item of information in a public record unless one of the specific exceptions of R.C. 149.43 applies.
3. Absent a prohibition against release in federal or state law, information supplied by the applicant to a county veterans service commission on an application for assistance or on the statement required by R.C. 5901.09, consisting of the amount, nature and source of public assistance received, is available for public inspection.

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**To: Gary L. Van Brocklin, Mahoning County Prosecuting Attorney, Youngstown, Ohio**

**By: Anthony J. Celebrezze, Jr., Attorney General, December 28, 1988**

I have before me your request for my opinion regarding the confidentiality of an application to the county veterans service commission<sup>1</sup> for assistance under

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<sup>1</sup> The request for this opinion was submitted prior to the effective date of Am. Sub. H.B. 626, 117th Gen. A. (1988) (eff. Sept. 14, 1988). Am. Sub. H.B. 626 clarifies the language of R.C. Chapter 5901 and changes the name of the soldiers' relief commission to veterans service commission. No substantive changes were made to R.C. Chapter 5901 that affect this opinion.

R.C. Chapter 5901. As determined by conversations with my staff, your major concern is whether an applicant's disclosure of the amount, nature and source of other public assistance received must be kept confidential.

To answer this question, it is necessary to set forth various statutes governing the creation and use of public records. First, the term "record" is broadly defined to encompass nearly every item of information, regardless of form, kept by a public office. R.C. 149.011(G) states:

"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 are characterized by R.C. 149.43(A)(1) as "public records," for purposes of availability for inspection by any person, 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.

The term "public record" under R.C. 149.43 has been judicially construed to mean "anything a governmental unit utilizes to carry out its duties and responsibilities." *State ex rel. Jacobs v. Prudoff*, 30 Ohio App. 3d 89, 92, 506 N.E.2d 927, 930 (Lorain County 1986). All public records are available to any member of the public for inspection and copying. R.C. 149.43(B).

It is next necessary to determine whether the veterans service commission is a public office which is subject to R.C. Chapter 149. R.C. 149.011(A) defines "public office" as including "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. 5901.02 authorizes the establishment of the veterans service commission as a public decision-making body of the county. 1982 Op. Att'y Gen. No. 82-081. Each veterans service commission is charged with the duty of screening applications to determine eligibility for and amounts of veterans service assistance. The county veterans service commission also allocates tax proceeds pursuant to R.C. 5901.11. R.C. 5901.01 through R.C. 5901.15. *See also*, Op. No. 82-081. A veterans service commission is, thus, a public office, as that term is defined in R.C. 149.011(A).

To complete the analysis that a particular document is a "public record" requires a determination whether the document falls within one of the statutory exceptions. *Prudoff*, 30 Ohio App. 3d at 92, 506 N.E.2d at 930. I will now examine whether the information on an application for veterans service assistance is a "record the release of which is prohibited by state or federal law." The other exceptions of R.C. 149.43 appear not to apply. A strict construction of any of the exceptions and the resolution of doubt in favor of disclosure is required, *State ex rel. National Broadcasting Co., Inc. v. City of Cleveland*, 38 Ohio St. 3d 79, 526 N.E.2d 786 (1988); *State ex rel. Beacon Journal v. Univ. of Akron*, 64 Ohio St. 2d 392, 415 N.E.2d 310 (1980); *Wooster Republican Printing Co. v. City of Wooster*, 56 Ohio St. 2d 126, 383 N.E.2d 124 (1978); *State ex rel. Plain Dealer Publishing Co. v. Krouse*, 51 Ohio St. 2d 1, 364 N.E.2d 854 (1977); *Dayton Newspapers, Inc. v. City of Dayton*, 45 Ohio St. 2d 107, 341 N.E.2d 576 (1976), since Ohio law favors disclosure of public records. *Barton v. Shupe*, 37 Ohio St. 3d 308, 525 N.E.2d 812 (1988).

According to information supplied by your staff, the sole source of funds for veterans service assistance is the proceeds of the levy set forth in R.C. 5901.11; no

federal government funds are received by the commission. Also, there is no federal program involved with the operation of the veterans service commission. No specific federal legislation refers to veterans service commissions on the state or local levels and no federal funding supports the operation of the county veterans service commission in Ohio. Furthermore, it appears that no federal law specifically prohibits release of an application for veterans service assistance. I am also not aware of any Ohio law which specifically prohibits the release of an application for veterans service assistance. State or federal law may, however, prohibit the release of specific information contained in a county veterans service application for assistance by making the specific categories of information confidential wherever located. If material excepted from the disclosure requirements of R.C. 149.43 is contained in an application for veterans service assistance, the entire application is *not* barred from disclosure. Only the excepted information is not subject to disclosure. *State ex rel. Outlet Communications, Inc. v. Lancaster Police Dept.*, 38 Ohio St. 3d 324, 528 N.E.2d 175 (1988); *State ex rel. Dispatch Printing Co. v. Wells*, 18 Ohio St. 3d 382, 481 N.E.2d 632 (1985). Information excepted from disclosure must, therefore, be redacted before the remainder of the record is released. *State ex rel. National Broadcasting Co.*, 38 Ohio St. 3d at 85, 526 N.E.2d at 791.

I note that the Mahoning County Veterans Service Commission application for assistance specifically requests information on "assistance [received] from any other agency."<sup>2</sup> Myriad forms of assistance are available from governmental agencies. *See, e.g.* 7 U.S.C. §2011 (food stamps); 42 U.S.C. §1201 (social security aid to the blind); R.C. Chapter 5111 (medical assistance); R.C. Chapter 5113 (general assistance); R.C. 5117 (energy subsidy). In the interests of brevity and clarity, and as an example, I will focus my discussion on the confidentiality requirements of federal and state law that apply to the Aid to Families with Dependent Children (AFDC) program. The statutes and regulations concerning the AFDC program are typical of governmental assistance programs. I will discuss the relevant statutes and regulations here to illustrate the analysis required to determine whether disclosure of the amount received and nature and source of assistance from any other agency "is a record the release of which is prohibited by state or federal law" under R.C. 149.43. The veterans service commission should analyze each disclosure request individually to determine if an applicable specific confidentiality requirement exists under state or federal law.

Aid to Families with Dependent Children is authorized by 42 U.S.C. §§601-615. Each state that accepts AFDC funds must develop a federally approved plan for administering the program. 42 U.S.C. §601. R.C. 5107.02 through R.C. 5107.15 govern Ohio's AFDC program. The Ohio Department of Human Services administers the program through each county department of human services. R.C. 329.04. 42 U.S.C. §602(a)(9) and 45 C.F.R. §205.50 mandate confidentiality by requiring each state AFDC plan to include safeguards which restrict the use or disclosure of information concerning AFDC applicants or recipients to purposes

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<sup>2</sup> R.C. 5901.09 requires that:

Each applicant for financial assistance under Sections 5901.01 to 5901.15 of the Revised Code shall provide the veterans service commission with a statement concerning his income and the amount of real and personal taxable property, stocks, bonds, or moneys on hand loaned or deposited in any bank or elsewhere, shares in building associations, mortgages, notes or other articles of value from which he derives an income or revenue. Such statement shall be made upon blanks furnished by the commission, and shall be subscribed by the applicant.

Inasmuch as R.C. 5901.09 refers to "applicant," the statement required therein may be part of an application required by the veterans service commission. It appears that the Mahoning County veterans service commission requires disclosure of receipt of other public assistance as "income" as used in R.C. 5901.09.

directly connected to the administration of the AFDC program or other federal or federally-assisted program. Compliance with federal mandates is found at R.C. 5107.02 which states in relevant part:

The department of human services shall administer sections 5107.02 to 5107.15 of the Revised Code. The department may:

(A) Prepare and submit to the secretary of health and human services a plan for aid to dependent children;

....

(E) Provide, by rules or otherwise, for putting into effect such methods of administration and procedure as are found by the administration or the department to be necessary to the efficient operation of the plan in the respective counties;

....

The rule making power of the department [of human services] shall include the power 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 sections 5107.02 to 5107.15 of the Revised Code. Wherever names and addresses of recipients of aid to dependent children or applicants for such aid or any other disclosure of information concerning such recipients or applicants are furnished to or held by any other agency,...such agency...shall 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.

No person shall, except for purposes directly connected 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.

Pursuant to R.C. 5107.02 the Ohio Department of Human Services promulgated the following rule, which states in relevant part:

(A) The "right of privacy" means that the individual controls the information held by the Ohio department of human services (ODHS) or county departments of human services (CDHS). 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 human services or county departments of human services 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; 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....

Ohio Admin. Code §5101:1-1-03A through §5101:1-1-03B. It is clear that all of the above statutes and regulations prohibit those responsible for administering AFDC programs and others who obtain access to that information from those agencies from releasing information about individual applicants and recipients.

The plain language of R.C. 5107.02 reveals that the rule making power of the department of human services granted therein is limited to regulating those agencies and officials "participating in the administration of sections 5107.02 to 5107.15 of the Revised Code [AFDC program]." Since customary rules of statutory construction require that a statute be read and construed as a whole, *Humphreys v. Winous Co.*, 165 Ohio St. 45, 133 N.E.2d 780 (1956), and every part of a statute's language is to be given effect, R.C. 1.47(B); *Scott v. Reinier*, 58 Ohio St. 2d 67, 388 N.E.2d 1226 (1979), the language of R.C. 5107.02 must be construed to limit the rulemaking power of the department of human services to govern the use, custody, and preservation of aid to dependent children records "of the department, the county administration for aid to dependent children, and all other state and county officials participating in the administration of sections 5102.02 through 5107.15 of the Revised Code." 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 specific statutory authority, R.C.119.04; *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 the rulemaking authority is limited to regulating those administering the AFDC program, the rulemaking authority, therefore, does not empower the department of human services to promulgate rules regulating the confidentiality of the records of the veterans service commission.<sup>3</sup>

Inasmuch as AFDC is a federal program administered by the states, the question arises whether federal law safeguards confidentiality of information regarding AFDC recipients regardless of the person or organization that possesses such information. The federal Privacy Act, 5 U.S.C. §552a, makes most records of individuals in the possession of federal agencies confidential. 5 U.S.C. 522a(b) states:

No agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior consent of, the individual to whom the record pertains, unless the disclosure of the record would be - [subject to any one of eleven specifically enumerated exceptions].

None of the exceptions apply to the records or information which is the subject of this opinion. Absent the written consent of the individual, any disclosure of information covered by the Privacy Act is prohibited unless authorized by one or more of eleven specific exceptions. *Local 2047, American Federation of Government Employees v. Defense General Supply Center*, 423 F. Supp. 481 (E.D. Va. 1976), *aff'd.*, 573 F.2d 184 (4th Cir. 1978). The federal Privacy Act, by its own terms, applies only to federal agencies and agency records. *Ryans v. University of Pittsburgh School of Medicine*, 589 F. Supp. 348 (D.V.I. 1984), *aff'd.*, 770 F.2d 1068 (3rd Cir. 1985), *cert. den.* 474 U.S. 849 (1985). The Privacy Act covers federal agencies only, not state agencies. *Dennie v. New Jersey Comm'n For The*

<sup>3</sup> R.C. 5107.02 requires that any government agency which receives AFDC recipient information from an agency or official administering the AFDC program adopt rules preventing the disclosure of such information. This confidentiality requirement is limited to AFDC records received from an administering agency. R.C. 5107.02 does not extend the rulemaking authority to make other records confidential.

*Blind and Visually Impaired*, 542 F. Supp. 841 (D.N.J. 1982). Under *Dennie* a non-federal agency is not covered by the act without a showing of federal control or supervision sufficient to characterize the agency as "federal" for the purposes of the act. Inasmuch as a county veterans service commission is an agency of the State of Ohio, does not receive federal funds and is not under federal control or supervision, I am of the opinion that a veterans service commission cannot be characterized as a "federal" agency for the purpose of the federal Privacy Act. Therefore, the federal Privacy Act does not apply to the records of a veterans service commission.

There is no equivalent of the federal Privacy Act in Ohio law. Individual statutes make narrow classes of government-held information confidential. *See, e.g.*, R.C. 102.06 (complaints to the ethics commission); R.C. 122.42 (financial data submitted to the director of development in connection with a loan application); R.C. 3304.21 (rehabilitation services commission client records); R.C. 3307.21 (state teachers retirement system members records); R.C. 3309.22 (school employees retirement system members records); R.C. 3319.321 (public school student records); R.C. 5101.181 (director of human services report of public assistance recipients). The Personal Information Systems Act, codified as R.C. Chapter 1347, but commonly called "Ohio's Privacy Act," regulates the use of personal information by state and local governments to protect individuals' rights of privacy with regard to public recordkeeping. *Henneman v. City of Toledo*, 35 Ohio St. 3d 241, 520 N.E.2d 207 (1988); *Wooster Republican Printing Co.*, 56 Ohio St. 2d at 133, 383 N.E.2d at 128. The Personal Information Systems Act restricts collection, maintenance and use of information on individuals to that which is "necessary" and "relevant". R.C. 1347.05(H). The act mandates that a state or local agency shall only use the personal information it keeps in a manner consistent with the agency's purpose. R.C. 1347.07. Moreover, R.C. 1347.08 grants access rights to individuals on whom information is collected and R.C. 1347.09 provides a mechanism to correct disputed information. The Personal Information Systems Act does not in any way restrict access to records that are public under the terms of R.C. 149.43. 1980 Op. Att'y Gen. No. 80-096. The General Assembly has made its intentions clear that R.C. Chapter 1347 does not restrict access to records. 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.

R.C. 149.43(D) is equally explicit in stating that the Personal Information Systems Act does not affect access to public records: "Chapter 1347. of the Revised Code does not limit the provisions of this section."

Inasmuch as I have been unable to find any specific federal law that applies and the federal Privacy Act is inapplicable to the records of the veterans service commission, an application for veterans service benefits is not a record the release of which is prohibited by federal law under R.C. 149.43. I am also unable to find any Ohio law which makes the assistance application a record the release of which is prohibited by state law. I have noted that numerous provisions of both state and federal law prohibit the direct or indirect disclosure of certain information about recipients of specific public assistance benefits by the agency administering the programs. However, none of these provisions prohibits an individual recipient from obtaining such information from those agencies and in turn disclosing the amount, nature and source of the benefits he is receiving. If a county veterans service commission determines that such information is required to make its determination, the commission may require the applicant to make these disclosures to it as a condition of the grant of the benefits. The individual may supply such information to

the commission as there is no express prohibition against it.<sup>4</sup> Since there is no federal or state law which makes such information confidential when obtained from the recipient, a strict construction of the exceptions to R.C. 149.43 requires me to find that such information is a public record which is subject to public access. The discussion in this opinion is intended as an example of the analysis required to be applied by the veterans service commission to determine whether disclosure of other specific public assistance received is permissible.

It is, therefore, my opinion and you are so advised that:

1. An application to the county veterans service commission for assistance under R.C. Chapter 5901 is a public record.
2. Any member of the public may inspect and copy each item of information in a public record unless one of the specific exceptions of R.C. 149.43 applies.
3. Absent a prohibition against release in federal or state law, information supplied by the applicant to a county veterans service commission on an application for assistance or on the statement required by R.C. 5901.09 consisting of the amount, nature and source of public assistance received, is available for public inspection.

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<sup>4</sup> R.C. 1347.08 grants access rights to individuals on whom the state maintains information. 1981 Op. Att'y Gen. No. 81-038; 1980 Op. Att'y Gen. No. 80-096. I have been unable to find any prohibition in state or federal law preventing an individual from disclosing information about himself. It is clear that a verification from the administering agency of the source, nature and amount of public assistance derived from the federal aid program used above as an example would be a record the release of which is prohibited by state and federal law. If the information was released to the veterans service commission it clearly would be confidential. Thus, the information supplied by the applicant on the veterans service commission application would be subject to disclosure while the verification received by the commission from the department of human services would be confidential.