

OPINION NO. 77-043

Syllabus:

It is not a violation of R.C. 5122.31 to permit unrestricted access to the general and separate indices of mental illness matters filed in the probate court by the public. They are "public records" under R.C. 149.43, and therefore they shall be open at all reasonable times for inspection. In light of the foregoing conclusion, an answer to your second question is inappropriate at this time.

To: L. Craig Hallows, Miami County Pros. Atty., Troy, Ohio
By: William J. Brown, Attorney General, August 3, 1977

Your request for my opinion poses the following questions:

1. Is it a violation of R.C. 5122.31 to permit unrestricted access to the general and separate indices of mental illness matters filed in the probate court, by the public, or does the right to information contained in the docket and journal include the information in the indices?
2. If it is a violation of this section to permit access to the indices, what is the liability or responsibility of a deputy clerk and the judge of the probate court, who, through error or omission, fails to locate a journal entry or court docket at the request of any person?

With respect to the first question, R.C. 5122.31, as amended, eff. 8-26-76, concerning the hospitalization of the mentally ill, provides in pertinent part:

"All certificates, applications, records and reports made for the purpose of Chapter 5122 of the Revised Code, other than court journal entries or court docket entries, and directly or indirectly identifying a patient or former patient or person whose hospitalization has been sought under Chapter 5122 of the Revised Code shall be kept confidential. . . ." (Emphasis added.)

In addition, R.C. 5123.89, effective 7-1-75, concerning the hospitalization of the feeble-minded and insane, provides in pertinent part:

"All certificates, applications, records, and reports made for the purpose of this chapter, other than court journal entries or court docket entries, which directly or indirectly identify a

resident or former resident of an institution for the mentally retarded or person whose institutionalization has been sought under this chapter shall be kept confidential. . . ." (Emphasis added.)

These statutes indicate that court journal entries and court docket entries are not made confidential by these provisions. A court journal entry or docket entry is the formal inscription upon the records of the court of a note or minute of any of the proceedings in an action. It is clear that a probate court index of mental illness matters, which lists the name of the person against whom the affidavit is filed, the case number, docket reference, and the nature of the proceedings, is a court journal entry or docket entry under R.C. 5122.31 or R.C. 5123.89. Thus, the release of such indices is not prohibited by the terms of R.C. 5122.31 or R.C. 5123.89.

R.C. 149.43 defines a "public record" and regulates the availability of such records in the following terms:

"As used in this section, 'public record' means any record required to be kept by any governmental unit, including, but not limited to, state, county, city, village, township, and school district units, except records pertaining to physical or psychiatric examinations, adoption, probation, and parole proceedings, and records the release of which is prohibited by state or federal law.

"All public records shall be open 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."

Although it is unnecessary to include a comprehensive analysis of Ohio case law concerning public records, it is necessary to realize the scope of the statute.

It is clear that any record that is required to be kept by statute is a public record that is open to inspection under R.C. 149.43. State ex rel. Grosser v. Boy, 42 Ohio St. 2d 498 (1975). Although every record required to be kept by statute qualifies as a public record, the scope of public records cannot be defined by such requirements. In the case of Dayton Daily News v. City of Dayton, 45 Ohio St. 2d 107 (1976), the Supreme Court held that a city's daily jail log was a record open to public inspection. The Syllabus of the Opinion provides as follows:

"A record is required to be kept by a governmental unit, within the meaning of R.C. 149.43, where the unit's keeping of such record is necessary to the unit's execution of its duties and responsibilities."

It is sufficient, for purposes of this Opinion, to note that most of the records maintained by governmental units are public records under R.C. 149.43. Furthermore, the

Supreme Court has stated that doubt should be resolved in favor of disclosure. Dayton Daily News, supra.

It is clear then that R.C. 149.43 establishes a public right to the inspection and copying of public records and the person responsible for such public records must permit the same. It is my conclusion that probate court indices of mental illness matters are public records under R.C. 149.43, which must be open at all reasonable times for inspection. The information contained in the indices is required to be kept in the operation of the probate court, in that the keeping of such records are necessary to the court's execution of its duties and responsibilities. It assures the proper functioning of the court in that it facilitates the classifying of all mental illness matters in the court. The indices do not come within the specific exceptions of R.C. 149.43, nor is the release thereof prohibited by state or federal law. In fact, court journal entries and docket entries are expressly excepted from confidentiality under the terms of R.C. 5122.31 and R.C. 5123.89.

In State, ex rel. Patterson v. Ayers, 171 Ohio St. 369 (1960), the Court spoke on the question of access to public records, as follows:

"The rule in Ohio is that public records are the people's records, and that the officials in whose custody they happen to be are merely trustees for the people; therefore anyone may inspect such records at any time, subject only to the limitation that such inspection does not endanger the safety of the record, or unreasonably interfere with the discharge of the duties of the officers having custody of the same."

The legislature might further limit access to and inspection of public records in the future. It suffices to say that the legislature has not denied the right to inspect the indices of mental illness matters in the probate court at this time.

Furthermore, the public's right to inspect court records pursuant to R.C. 149.43 may not be restricted by a court because of the intended purpose of such inspection or the use to be made of the records. 1974 Op. Att'y Gen. No. 97.

I would like to take the opportunity to briefly discuss Chapter 1347 of the Revised Code, eff. 1-1-77, commonly known as the Privacy Act. R.C. 1347.07, which regulates the use and disclosure of personal information by governmental agencies, is pertinent in part:

"(A) No state or local agency shall disclose any personal information to another state or local agency, to a federal agency, or to any person, . . . without the prior consent of the person who is the subject of the information, unless:

". . .

"(2) The disclosure or use of the personal information . . . is otherwise required or authorized by federal or state statutes;

". . ."

It is clear that R.C. 1347.07(A)(2) authorizes disclosure of information which is a matter of public record under R.C. 149.43. Therefore, R.C. 1347.07 does not prohibit disclosure of probate court indices of mental illness matters, since they are public records under R.C. 149.43.

However, Chapter 1347 of the Revised Code does provide certain safeguards in respect to the disclosure of personal information.

R.C. 1347.08, effective 1-1-77, concerning personal information systems, is pertinent in part:

"(A) Every state or local agency that maintains a personal information system, upon the request and the proper identification of any person, shall:

". . .

"(2) Permit the person, or an attorney who presents a signed written authorization made by the person to inspect all personal information in the system of which he is the subject;"

In addition, R.C. 1347.09 provides in pertinent part:

"(A) (1) If the person disputes the accuracy, relevance, timeliness, or completeness of the personal information pertaining to him that is maintained by any state or local agency, he may request the agency to investigate the current status of the information. The agency shall, within a reasonable time after receiving the request from the disputant, make a reasonable investigation to determine whether the disputed information complies with division (F) of section 1347.05 of the Revised Code and shall notify the disputant of the results of the investigation and of the action that the agency plans to take with respect to the disputed information. . . ."

It seems clear that an individual has the right to inspect personal information of which he is the subject and to dispute the accuracy, relevance, timeliness or completeness of such personal information. Although the probate court indices of mental illness matters are public records, and therefore open for inspection at all reasonable times, an individual does have recourse to the court to dispute the accuracy, relevance, timeliness or completeness of the information in the records.

Furthermore, R.C. 1347.05(H) provides for the elimination of information from the system when the information is no longer timely.

In specific answer to your question, it is my opinion and you are so advised that it is not a violation of R.C. 5122.31 to permit unrestricted access to the general and separate indices of mental illness matters filed in the probate court by the public. They are "public records" under R.C. 149.43, and therefore they shall be open at all reasonable times for inspection. In light of the foregoing conclusion, an answer to your second question is inappropriate at this time.