

**OPINION NO. 86-089**

**Syllabus:**

Pursuant to R.C. 149.43, a personnel file maintained by an exempted village school district is a public record, and shall be made available for inspection to any member of the general public at all reasonable

times during regular business hours, except to the extent such file may include records which are excepted from the definition of the term "public record," set forth in R.C. 149.43(A)(1), such as medical records and trial preparation records.

---

To: Robert L. Becker, Licking County Prosecuting Attorney, Newark, Ohio  
By: Anthony J. Celebrezze, Jr., Attorney General, November 21, 1986

I have before me your opinion request in which you ask whether the personnel file of a person who is currently employed as a teacher in an exempted village school district must be released to the news media upon request.

Access by the general public, including the news media,<sup>1</sup> to information in the possession of public entities is governed by R.C. 149.43, which states in part:

(B) All public records shall be promptly prepared and made available for inspection to any member of the general public at all reasonable times during regular business hours. 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.

For purposes of R.C. 149.43, the term "records" is defined as, "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." R.C. 149.011(G). A "public record," as that term is used in R.C. 149.43, is defined as:

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 [R.C. 2151.85] and to appeals of actions arising under that section, records listed in [R.C. 3107.42(A)], 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).

It is my understanding that the information sought by the news media in the situation you present is contained in the personnel file of a person who is employed by an exempted village school board. See generally R.C. 3311.04 (defining the term "exempted village school district"). Personnel files serve to document the activities of the employing school district, and thus are "records" for purposes of R.C. 149.011(G). See R.C. 149.40 ("[t]he head of each public office

---

<sup>1</sup> See, e.g., State ex rel. Dispatch Printing Co. v. Wells, 18 Ohio St. 3d 382, 481 N.E.2d 632 (1985).

shall cause to be made only such records as are necessary for the adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency and for the protection of the legal and financial rights of the state and persons directly affected by the agency's activities"). Since the personnel file is maintained by a school district, it is clear that the records about which you ask are "kept by [a] public office" for purposes of R.C. 149.43(A)(1).

Further, it is well settled that personnel records of individuals employed by those units set forth in R.C. 149.43(A)(1) are public records, none of the exceptions set forth in that subdivision being applicable. See 1981 Op. Att'y Gen. No. 81-038 (employee personnel files maintained by the Ohio Civil Rights Commission are, to the extent not excepted by R.C. 149.43(A)(1), public records); 1981 Op. Att'y Gen. No. 81-006 (syllabus, paragraph two) ("employee address and payroll records maintained by a board of township trustees are public records that must be made available for inspection at all reasonable times pursuant to R.C. 149.43"). See also State v. Bundy, 20 Ohio St. 3d 51, 485 N.E.2d 1039 (1985) (civil service personnel records are public records).<sup>2</sup>

I note, however, that R.C. 149.43(A)(1) excepts medical records, among other things, from the definition of "public records." See R.C. 149.43(A)(3) (defining "medical record"). Thus, should an employee's personnel file contain medical records, such records are, as are the other exceptions set forth in R.C. 149.43(A)(1), not subject to disclosure under R.C. 149.43. R.C. 149.43(A)(1) further excepts from the definition of a public record those items which constitute trial preparation records, meaning, "any record that contains information that is specifically compiled in reasonable anticipation of, or in defense of, a civil or criminal action or proceeding, including the independent thought processes and personal trial preparation of an attorney" (emphasis added). R.C. 149.43(A)(4). See generally 1980 Op. Att'y Gen. No. 80-103 (analyzing the scope of the definition of trial preparation records). Thus, if any records included within a personnel file kept by a school district were specifically compiled in reasonable anticipation of a civil or criminal action or proceeding, see, e.g., R.C. 3319.16 (concerning the procedure for termination of a teacher's contract), such records are not public records. Specifically concerning the hearing by a board of education in regard to the termination of a teacher's contract, I note that R.C. 3319.16 requires that,

---

<sup>2</sup> The maintenance and publication of inaccurate information in the personnel file of a dismissed public employee may constitute a deprivation of "liberty," for purposes of the Fourteenth Amendment to the United States Constitution. Kendall v. Board of Education, 627 F. 2d 1 (6th Cir. 1980). See Sullivan v. Brown, 544 F. 2d 279 (6th Cir. 1976). In this regard, I note that R.C. Chapter 1347 governs the maintenance of "personal information," as defined in R.C. 1347.01(E), by governmental entities, including school districts. To the extent that information in the personnel files maintained by a school district constitute "personal information," R.C. 1347.05(F) requires the district, in part, to develop procedures for maintaining accurate and complete information. See generally R.C. 1347.08-.09 (concerning right of inspection of personal information and procedure to be used where information is disputed).

if after the hearing, the board decides against termination of the teacher's contract, "the charges and the record of the hearing shall be physically expunged from the minutes." Thus, such records would no longer be kept by the school district and would not, therefore, constitute public records for purposes of R.C. 149.43.

Recently, the Ohio Supreme Court issued State ex rel. Dispatch Printing Co. v. Wells, 18 Ohio St. 3d 382, 481 N.E.2d 632 (1985), concerning the availability of personnel information in the possession of a municipal civil service commission. The court noted that, pursuant to statute, the civil service commission:

must keep records of all their proceedings and maintain a complete roster providing the name, address, date of appointment, and various other essential employment information of all persons in the city civil service. All of this information is stipulated to be available for public inspection.

Moreover, when a member of the classified civil service is demoted, that order must be filed with the municipal civil service commission. R.C. 124.34.

18 Ohio St. 3d at 383, 481 N.E.2d at 633-34. Based upon the duties of the commission, the court found that the personnel information maintained by the commission constituted a public record, which, at that time, was defined in part as: "any record that is required to be kept by any governmental unit"<sup>3</sup> (emphasis added). The court went on to note, however, that:

all of the information which may be contained in [the employee's] personnel file may not necessarily be subject to public disclosure. [The] personnel file may very well contain documents which are neither required to be maintained by law, nor are necessary to respondents' execution of their duties and responsibilities. Any such information would clearly be outside the scope of R.C. 149.43 and not subject to public disclosure.

Further, if a document composed of information outside the scope of R.C. 149.43 was found to be "personal" in nature as defined in R.C. 1347.01(E), then respondents would be under an affirmative duty, pursuant to R.C. 1347.05(G), to prevent its disclosure.

To protect against the unfettered disclosure of personnel records which do not fall within the purview of R.C. 149.43, determination of an application for disclosure must be made on an ad hoc basis with the court being the final arbiter as to whether the information is subject to public disclosure. Only if

---

<sup>3</sup> The version of R.C. 149.43(A)(1) defining a public record in this manner was enacted in 1979-1980 Ohio Laws, Part I, 245 (Am. Sub. S.B. 62, eff. Jan. 18, 1980). R.C. 149.43(A)(1) was subsequently amended in 1983-1984 Ohio Laws, Part I, 1791 (Am. Sub. H.B. 84, eff. March 19, 1985), but that portion of R.C. 149.43(A)(1) quoted above remained unchanged. In Am. Sub. H.B. 238, 116th Gen. A. (1985) (eff. July 1, 1985), however, the legislature amended R.C. 149.43(A)(1) to expand the definition of a public record by defining it, in pertinent part, as "any record that is kept by any public office," such language remaining in effect in the current version of R.C. 149.43(A)(1), Am. Sub. H.B. 319, 116th Gen. A. (1985) (eff. March 24, 1986).

the information in question does not fall within the scope of R.C. 149.43 must a determination be made as to whether its release would constitute an invasion of personal privacy as prohibited by R.C. Chapter 1347. (Emphasis in original.)

18 Ohio St. 3d at 385, 481 N.E.2d at 634-35.

As set forth in note 3, supra, the definition of a public record for purposes of R.C. 149.43, is no longer restricted to those records which are required to be kept by a governmental unit, but now includes all records which are kept by a public office, including a school district. Thus, although the court in Wells found that the civil service commission may have had certain records which were not required to be kept, and, therefore, would not be public records, such analysis is no longer necessary under the current definition of a "public record," as set forth in R.C. 149.43(A)(1). Consequently, all records which are kept by a public office and which do not fall within one of the exceptions set forth in R.C. 149.43(A)(1) are public records, and the inquiry into whether certain records in the possession of a public office constitute "personal information," for purposes of R.C. Chapter 1347, is not necessary. Rather, R.C. 1347.04 expressly states:

(B) 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 [R.C. 149.43]....

The disclosure to members of the general public of personal information contained in a public record, as defined in [R.C. 149.43], is not an improper use of personal information under this chapter.

Similarly, R.C. 149.43(C) states: "Chapter 1347. of the Revised Code does not limit the provisions of this section." See generally Op. No. 81-038 and 1980 Op. Att'y Gen. No. 80-096 (discussing the interplay of R.C. Chapter 149 and R.C. Chapter 1347).

It is, therefore, my opinion, and you are advised, that pursuant to R.C. 149.43, a personnel file maintained by an exempted village school district is a public record, and shall be made available for inspection to any member of the general public at all reasonable times during regular business hours, except to the extent such file may include records which are excepted from the definition of the term "public record," set forth in R.C. 149.43(A)(1), such as medical records and trial preparation records.