

November 17, 2021

The Honorable Melissa A. Schiffel  
Delaware County Prosecuting Attorney  
145 North Union St., 3<sup>rd</sup> Floor  
Delaware, Ohio 43015

SYLLABUS: 2021-025

1. Data created by a county office that is merely stored on servers kept and maintained by a county automatic data processing center does not constitute a “record,” as defined by R.C. 149.011(G), of the county automatic data processing center.
2. As the data from a county office electronically stored on servers kept and maintained by a county automatic data processing center does not constitute a “record” of the county automatic data processing center, the center has no authority to respond to public records requests made pursuant to R.C. 149.43.



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## OPINION NO. 2021-025

The Honorable Melissa A. Schiffel  
Delaware County Prosecuting Attorney  
145 North Union St., 3<sup>rd</sup> Floor  
Delaware, Ohio 43015

Dear Prosecutor Schiffel:

You ask for an opinion regarding data of a county office that is electronically stored on servers kept and maintained by a county automatic data processing center. *See* R.C. 307.842. I have framed your questions as follows:

1. Is data from a county office electronically stored on servers kept and maintained by a county automatic data processing center a “record,” as defined by R.C. 149.011(G), of the county automatic data processing center?
2. Does a county automatic data processing center have authority to respond to public records requests for the data made pursuant to R.C. 149.43?

For the reasons that follow, I conclude that data of a county office electronically stored on servers kept and maintained by a county automatic data processing center is not a record of the county automatic data processing center for purposes of R.C. 149.43 and R.C. 149.011(G). As such, a county automatic data processing center does not have authority to respond to public record requests regarding the stored data.

## I

A county automatic data processing board is created by statute. R.C. 307.84 states: “The board of county commissioners of any county may, by resolution, establish a county automatic data processing board.” The county automatic data processing board “may establish an automatic data processing center which shall provide a centralized system for the use of automatic or electronic data processing or record-keeping equipment, software, or services for all county offices.” R.C. 307.842. The county automatic data processing center is thus a centralized and secure site for the storage and retention of electronic data from county offices.

Your opinion request requires that I determine whether data created by a county office and stored on servers kept and maintained by a county automatic data processing center constitutes a “record” of the county automatic data processing center for purposes of R.C. 149.011(G) and R.C. 149.43. I conclude that the answer is “no.”

The data in question consists of various types of electronic information generated by county offices. R.C. 149.011(G) provides the definition for “record” as used in R.C. Chapter 149. The definition states that a “record” “includes any document, device, or item, regardless of physical form or characteristic, including an electronic record as defined in section 1306.01 of the Revised Code, 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.*” *Id.* (Emphasis added). R.C. 149.43(A)(1) states, in part and with listed exceptions, that a “public record” includes records kept by a county public office. Regarding public access, R.C. 149.43(B)(1) states, in part and with

exceptions, that any person may request access to public records for inspection.

The Ohio Supreme Court has addressed the meaning of “record” under R.C. 149.011(G) and R.C. 149.43. A document that fits the definition of “record” can be acquired through Ohio public records laws from the office to which the record belongs. A “record” means a (1) document, device, or item, (2) created or received by or coming under the jurisdiction of a public office, *and* (3) which serves to show the organization, functions, policies, decisions, procedures, operations, or other activities of a public office. *See State ex rel. Dispatch Printing Co. v. Johnson*, 106 Ohio St.3d 160, 2005-Ohio-4384, 833 N.E.2d 274, ¶19.

The data maintained by a county data processing center does not satisfy the third requirement: data that is merely stored by these centers does not record the functions or activities of the office. The reason is simple: the data provides no insight into the organization, functions, policies, decisions, procedures, operations, or other activities *of a county automatic data processing center*. A county automatic data processing center merely receives and stores the data created by a county office. *See* R.C. 307.842 (“The county automatic data processing board may establish an automatic data processing center which shall provide a centralized system for the use of automatic or electronic data processing or record-keeping equipment, software, or services for all county offices”). And the plain language of R.C. 149.011(G) requires more than mere receipt and possession of a document by a public office to qualify that document as a “record” of that office for purposes of R.C. 149.43. *E.g.*, *State ex rel. Cincinnati Enquirer v. Ronan*, 127 Ohio St.3d 236, 2010-Ohio-5680, 938 N.E.2d 347, ¶13; *State ex rel. Beacon Journal Publishing Co. v. Whitmore*, 83 Ohio St.3d 61, 64, 697 N.E.2d 640 (1998).

Because the informational content of the stored data is not utilized by a county automatic data processing center to carry out a duty, the stored data is not a record of the county automatic data processing center. *Compare State ex rel. MADD v. Gosser*, 20 Ohio St.3d 30, 33, 485 N.E.2d 706 (1985) (The requested documents are public records of the court because “the requested documents are received by, are under the jurisdiction of, and are utilized by, the court to render its decision”); *compare Whitmore*, at 63 (Letters received by a judge, even if not discarded, that are not utilized in the judge’s sentencing decision are not subject to disclosure because the letters do not serve to document the organization, functions, policies, decisions, procedures, operations, or other activities of the judge’s office); *Ronan*, at ¶16 (The school district’s mere receipt of resumes is not enough, and “until the school district retrieved the documents from its post office box and reviewed them or otherwise used or relied on them, they were not records subject to disclosure under R.C. 149.43”). As noted by the Ohio Supreme Court, an alternative determination “would lead to the absurd result that any document received by a public office and retained by that office would be subject to R.C. 149.43 regardless of whether the public office ever used it to perform a public function.” *Ronan*, at ¶13, quoting *Whitmore*, at 64. Thus, the stored data is not a record of a county automatic data processing center for the purposes R.C. 149.011(G) and R.C. 149.43.

## II

You also ask if a county automatic data processing center may respond to public record requests pursuant to R.C. 149.43 for the stored data created by county offices. As the data is not a record of the automatic data processing center, I conclude that the center has no authority under the public-records laws to respond to public-records requests for that data. *See* R.C. 149.43(B)(1).

Because a county automatic data processing center is a creature of statute, the center's authority is limited by what is set forth by statute. *See* 2015 Op. Att'y Gen. No. 2015-034, Slip Op. at 2; 2-334 ("a board of county commissioners, as a creature of statute, has only those powers that are expressly granted by statute or that are necessarily implied therein"). There is no authority in the Revised Code for the center to release the data.

Moreover, as already stated, not every document given to a public body qualifies as a public record. *See Ronan*, at ¶13. Thus, given the lack of express or necessarily implied statutory authority and that the data does not meet the definition of "record" of the automatic data processing center under R.C. 149.011(G), I conclude that a county automatic data processing center lacks the authority to disclose the data from county offices. *Compare* 2005 Op. Att'y Gen. No. 2005-025, at 2-266 ("No statute expressly or impliedly authorizes or requires a county automatic data processing board to access data in the computer information systems of ODJFS"). Public records requests for the data should be directed to county offices—not to a county automatic data processing center.

Your request also makes particular note of the county sheriff's office. Specifically, you mention the confidential law enforcement investigatory records ("CLEIR") exemption. R.C. 149.43(A)(1)(h). The CLEIR exemption refers to any record pertaining to a law enforcement matter of a criminal, quasi-criminal, civil, or administrative nature to the extent that release of the record would create a high probability of certain disclosures. *See* R.C. 149.43(A)(2)(a)-(d). But, as described above, the data held by a county automatic data processing center is not a record and is thus not subject to Ohio public records laws. Any public records requests for records covered by the CLEIR exemption should be made to the county sheriff's office.

Accordingly, it is my opinion, and you are hereby advised that:

1. Data created by a county office that is merely stored on servers kept and maintained by a county automatic data processing center does not constitute a "record" as defined by R.C. 149.011(G), of the county automatic data processing center.
2. As the data from a county office electronically stored on servers kept and maintained by a county automatic data processing center does not constitute a "record," of the county automatic data processing center, the center has no authority to respond to public records requests made pursuant to R.C. 149.43.

Respectfully,



DAVE YOST  
Ohio Attorney General