

November 9, 2022

The Honorable David W. Phillips
Union County Prosecuting Attorney
249 West Fifth Street
Marysville, Ohio 43040

SYLLABUS: 2022-015

1. Law enforcement officers may not disseminate identification information contained in LEADS and OHLEG to the coroner or the coroner's investigators for the sole purpose of identifying a deceased person.
2. A coroner may not compel the dissemination of identification information contained in LEADS and OHLEG through the subpoenaing power set forth in R.C. 313.17.
3. Deputy sheriffs who also serve as coroner investigators may not access and disseminate identification information contained in LEADS and OHLEG when serving as, and carrying out the duties of, a coroner investigator.



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OPINION NO. 2022-015

The Honorable David W. Phillips
Union County Prosecuting Attorney
249 West Fifth Street
Marysville, Ohio 43040

Dear Prosecutor Phillips:

You requested an opinion regarding a county coroner's ability to receive information contained in the Law Enforcement Automated Data System ("LEADS") and the Ohio Law Enforcement Gateway ("OHLEG"). I have framed your questions as follows:

1. Can law enforcement officers provide the Social Security Numbers and other identifying information of the deceased found in LEADS or OHLEG to the coroner or his investigators to assist in the performance of their duties?
2. If question one is answered in the negative, can the coroner receive the identification information by subpoenaing law enforcement officers pursuant to R.C. 313.17?
3. Can deputy sheriffs who are appointed by the coroner as investigators under R.C. 313.05(B)(2) provide identification information in LEADS or OHLEG to the coroner

to identify the deceased as required by R.C. 313.08?

For the reasons that follow, I answer all three questions in the negative.

I

State law requires that coroners “make a reasonable attempt to promptly identify the body or remains of a deceased person.” R.C. 313.08(B). The coroner “may use any means available in attempting to identify the body or remains.” *Id.* You ask whether the coroner’s authority to “use any means available” allows a coroner to obtain information contained in LEADS and OHLEG—two databases explored in more depth below. You do not ask whether the coroner can *directly* access LEADS or OHLEG. Rather, you ask whether the coroner can indirectly access those databases by having a law-enforcement officer access and obtain for the coroner the identification information these databases contain.

Before turning to your specific questions, I note several qualifiers to the opinion.

First, the Revised Code provides a coroner with multiple avenues to assist with identifying unknown deceased persons. R.C. 313.08(C) states that, “if the coroner is unable to identify the body or remains of a deceased person within thirty days after the body or remains of the deceased person are delivered to the coroner, the coroner shall notify the bureau of criminal identification and investigation... and forward a DNA

specimen from the body or remains of the deceased person to the bureau.” *See also* R.C. 313.08(E). R.C. 109.57(A)(6), contained in the statute that creates OHLEG, provides that “the superintendent [of BCI] shall, upon request, assist a county coroner in the identification of a deceased person through the use of fingerprint impressions.” This opinion does not address means of obtaining information, such as these, that are specifically authorized by statute.

Second, I do not address in this opinion whether the coroner may *directly* access LEADS or OHLEG, whether to obtain information to help identify a body or for any other purpose. Access decisions are made by the administrators of LEADS and OHLEG. *See* R.C. 109.57(C)(5) and R.C. 5503.10.

Finally, as discussed below, some of the reasoning for my conclusion regarding LEADS is based on federal law. The Attorney General’s opinion-rendering function has long been recognized to be limited when interpreting federal law. *See, e.g.*, 1999 Op. Att’y Gen. No. 99-007, at 2-55; 1997 Op. Att’y Gen. No. 97-25, at 2-146. I encourage you to tread carefully when making decisions regarding the dissemination of information obtained from LEADS.

II

LEADS and the OHLEG are confidential law enforcement-databases that contain personal information about Ohioans. Both are statutory creations. *See* R.C. 5503.10 and 109.57(C)(5). And both have administrative code provisions. *See* R.C. 5503.10 and 109.57(C)(5).

To answer your questions, it is important to first discuss both databases in some detail, starting with LEADS.

A

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R.C. 5503.10 creates LEADS, and situates the database in the department of public safety under the division of the state highway patrol. *Id.* As explained in 1989 Op. Att’y Gen. No. 89-005, “LEADS is directly linked to the National Crime Information Center (NCIC), a computerized information system operated by the Federal Bureau of Investigation (FBI).” 1989 Op. Att’y Gen. No. 89-005, at 2-21; *see* 28 C.F.R. §20.31. “Because LEADS is directly linked to the NCIC, Ohio law enforcement authorities have agreed to abide by NCIC rules.” 1989 Op. Att’y Gen. No. 89-005; *see* 28 C.F.R. §20.36(a).

One of those federal regulations is 28 C.F.R. §20.1. It, declares that “the purpose” of the regulations governing NCIC is “to assure that criminal history record information wherever it appears is collected, stored, and disseminated in a manner to ensure the accuracy, completeness, currency, integrity, and security of such information and to protect individual privacy.” A separate provision, 28 C.F.R. §20.20(a), states that:

The regulations in this subpart apply to all State and local agencies and individuals collecting, storing, or disseminating criminal history record information

processed by manual or automated operations where such collection, storage, or dissemination has been funded in whole or in part with funds made available by the Law Enforcement Assistance Administration subsequent to July 1, 1973, pursuant to title I of the Act. Use of information obtained from the FBI Identification Division or the FBI/NCIC system shall also be subject to limitations contained in subpart C.

Other sections discuss dissemination of information. *See* 28 C.F.R. §20.21 and 28 C.F.R. §2.33. Of relevance here, no federal regulation permits anyone to disclose covered information to coroners in circumstances unrelated to criminal justice, or in situations not otherwise permitted by statute or rule. *See* 28 C.F.R. §20.3(b) and (g) (stating the definition of “administration of criminal justice” and “criminal justice agency”).

Ohio has its own regulations governing access and dissemination of information contained in LEADS. As noted, the program is administrated by the superintendent of the state highway patrol. And the superintendent adopts rules under R.C. Chapter 119. R.C. 5503.10. Those rules establish fees and guidelines for the operation and participation in LEADS. They also announce criteria for granting and restricting access to information contained in LEADS. *Id.*

Except as stated in R.C. 5503.101, no one is permitted to knowingly gain access to LEADS, permit access to LEADS, or disseminate information contained in

LEADS “without the consent of, or beyond the scope of the express or implied consent of, the chair of the law enforcement automated data system steering committee.” R.C. 2913.04(C). Ohio Adm. Code 4501:2-10-03 sets forth who may participate in LEADS. Permissible participants include criminal-justice agencies, agencies under the management and control of a criminal-justice agency, and other listed entities. *See id.* Neither the Revised Code nor the Ohio Administrative Code extends access to coroners or coroner investigators. Ohio Adm. Code 4501:2-10-03.

Ohio Adm. Code 4501:2-10-06 sets forth access to LEADS and the dissemination of information. Of note, LEADS access shall be limited to certified operators who are accountable for all transactions occurring during their account log in. *Id.* at (A). And “messages and/or throughput of any kind accessed through LEADS shall be restricted to the use of duly authorized law enforcement and/or criminal justice agencies for the administration of criminal justice. Access to and dissemination of LEADS throughput is governed by LEADS security policy (11/1/2016), LEADS manual (10/1/2016) and NCIC operating manual (8/11/2015).” *Id.* at (C). Those who violate these restrictions may be punished. Ohio Adm. Code 4501:2-10-11

As stated in the LEADS Manual, *see* Ohio Adm. Code 4501:2-10-06(C), “LEADS information may only be shared for the administration of criminal justice.” LEADS Ohio Law Enforcement Automated Data System, LEADS Manual, *1 Introduction 2021* at 3-4, <https://perma.cc/3E8R-EN7Q>. 28 C.F.R. §20.3 sets forth definitions for “criminal justice agency,” the

“administration of criminal justice,” and “criminal justice history record information.”

- “Criminal justice agency” means “courts; and a governmental agency or any subunit thereof that performs the administration of criminal justice pursuant to a statute or executive order, and that allocates a substantial part of its annual budget to the administration of criminal justice. State and federal Inspector General Offices are included.” 28 C.F.R. §20.3(g)(1) and (2).
- The “administration of criminal justice” “means [the] performance of any of the following activities: Detection, apprehension, detention, pre-trial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. The administration of criminal justice shall include criminal identification activities and the collection, storage, and dissemination of criminal record information.” *Id.* at (b).
- “Criminal history record information” means “information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, including acquittal, sentencing, correctional supervision, and release. The term does not include identification information such as fingerprint records if such information does not

indicate the individual's involvement with the criminal justice system." *Id.* at (d).

2

Now turn to your question: may coroners and their investigators indirectly access LEADS for purposes of obtaining identifying information about deceased persons? The answer is no.

Recall that "messages and/or throughput of any kind accessed through LEADS shall be restricted to the use of duly authorized law enforcement and/or criminal justice agencies for the administration of criminal justice." Ohio Adm. Code 4501:2-10-06(C). As an initial matter, coroners and deputy coroners are not law-enforcement officers. *See* 1998 Op. Att'y Gen No. 98-033, syllabus, paragraph 1. Further, identification without a criminal component is not encompassed within the definition of the "administration of criminal justice." *See* 28 C.F.R. §20.3(b). As stated in 28 C.F.R. §20.3(d), criminal history record information "does not include identification information... if such information does not indicate the individual's involvement with the criminal justice system." Since the information you inquire about is not tied to criminal justice, identification information contained in LEADS cannot be given to the coroner or the coroner's investigators.

Thus, my answer to question one as it pertains to LEADS is that law enforcement officers cannot disseminate information obtained through LEADS to the coroner or the coroner's investigators. *See* R.C. 2913.04(C).

B

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OHLEG is a statewide communications network. Its purpose is to “to gather and disseminate information, data, and statistics for the use of law enforcement agencies” and for other specified uses. R.C. 109.57(C)(1). Accordingly, OHLEG’s Rules and Regulations prohibit “any utilization of OHLEG that is not directly related to the administration of criminal justice, or that is inconsistent with OHLEG security policies, Ohio Revised Code, Ohio Administrative Code, or the criminal justice purpose for which the user was granted OHLEG access.” OHLEG Rules and Regulations, Effective February 22, 2017, at 5, https://files.ohleg.org/general/OHLEG_Rules_Regulations.pdf. The OHLEG Rules and Regulations also states that:

CJI [Criminal Justice Information] shall only be used and disseminated consistent with the authorized purpose for which it was accessed. Dissemination of CJI to another agency is authorized if (a) the other agency is an authorized recipient of such information, or (b) the other agency is performing personnel and appointment functions with codified authority to obtain CJI for criminal employment applicants.

Id. at 24. Personal identifiable information shall be extracted from criminal justice information only for

official business. *Id.* at 26. And before exchanging OHLEG data, agencies must have a formal agreement in place that specify security controls. *Id.* at 25. The OHLEG Rules and Regulations further state that:

CJI obtained through OHLEG may not be used or disseminated beyond the implied or expressed consent of the Superintendent of the Bureau of Criminal Investigation. Use and dissemination is deemed to be within the scope of the Superintendent's consent when it is provided to a criminal justice agency or a defendant's counsel, in accordance with dissemination restrictions [related to discovery motions].

Id. at 26. Therefore, it is clear that criminal justice information obtained through OHLEG must be used for criminal justice purposes. See Ohio Attorney General's Office, *Ohio Law Enforcement Gateway*, <https://perma.cc/PVR6-GXDE>; see also R.C. 2913.04(D) ("No person shall knowingly gain access to, attempt to gain access to, cause access to be granted to, or disseminate information gained from access to the Ohio law enforcement gateway... without the consent of, or beyond the scope of the express or implied consent of, the superintendent of the bureau of criminal identification and investigation").

It follows from all this that law-enforcement officers may not disseminate identification information

contained in OHLEG to the coroner or the coroner's investigators for the sole purpose of identifying a deceased person. Using OHLEG data for that purpose is prohibited because it is "not directly related to the administration of criminal justice." OHLEG Rules and Regulations, Effective February 22, 2017, at 5, https://files.ohleg.org/general/OHLEG_Rules_Regulations.pdf. Thus, the Rules and Regulations governing OHLEG prohibit releasing this information. And no other statute or rule otherwise authorizes dissemination of confidential OHLEG information to a coroner to assist the coroner with identifying a body. There are specified purposes for which one may obtain information from OHLEG, and none provides this authorization. *See* R.C. 2909.15(E)(1) and (2); R.C. 4723.064; R.C. 111.46; R.C. 4731.39; Ohio Adm. Code. 109:5-7-02.

Because neither the OHLEG Rules and Regulations nor an authorizing statute or rule permits the dissemination of OHLEG information to a coroner or a coroner's investigators, I conclude that law-enforcement officers cannot disseminate OHLEG information to coroners or coroner investigators. Therefore, I answer question one as it pertains to OHLEG in the negative.

III

A negative answer to question one requires an examination of the second question. Question two asks if the coroner may use R.C. 313.17 to subpoena law enforcement officers in order to obtain the information contained in LEADS and OHLEG.

R.C. 313.17 states in applicable part:

The coroner or deputy coroner may issue subpoenas for such witnesses as are necessary, administer to such witnesses the usual oath, and proceed to inquire how the deceased came to his death, whether by violence to self or from any other persons, by whom, whether as principals or accessories before or after the fact, and all circumstances relating thereto.

The relevant language of R.C. 313.17 indicates that it is tied to determining cause of death, not identification. Prior Attorney General Opinions agree with this interpretation. *See* 1998 Op. Att’y Gen. No. 98-031, at 2-172 (“R.C. 313.17, therefore, authorizes a county coroner to subpoena witnesses when determining the cause, manner, and mode of unexplained deaths in the county. [I]t is reasonable to infer that the express authority to subpoena witnesses includes the authority to command such witnesses to produce records that the coroner believes are germane to determining the cause, manner, or mode of an individual’s death”); *see also* 1988 Op. Att’y Gen. No. 88-035, at 2-159 (“R.C. 313.17, which authorizes the coroner to conduct an inquest to determine how the deceased ‘came to his death,’ requires the coroner to make a report based on, among other things, ‘such...sources of information as are available.’ Certainly the information available from the analysis of a weapon found ‘near the decedent’ could be helpful to the coroner as he conducts his inquiry into the manner of death”). Here, the anticipated use of R.C. 313.17 is not directed at determining the cause of death.

As discussed above, LEADS and OHLEG information is confidential by statute, and there are numerous statutory means extended to the coroner to assist with identification that do not require LEADS or OHLEG information. There may be occasional situations where identification would assist with determining cause of death, but I do not view the coroner's general subpoena authority in R.C. 313.17 as superseding the specific confidentiality provisions governing LEADS and OHLEG that limit dissemination of information solely for criminal justice purposes.

IV

R.C. 313.05(B)(2) allows for the appointment of deputy sheriffs as coroner investigators. Your third question asks if deputy sheriffs who are appointed as coroner investigators may use their access to LEADS and OHLEG, which they have because they are deputy sheriffs, for the purpose of disseminating identification information to the coroner. For the reasons stated in my analysis of question one, I answer question three in the negative.

While law enforcement officers have access to LEADS and OHLEG, law enforcement officers cannot use their access to either database except for permissible purposes. *See* R.C. 2913.04(C) and (D); *see also State v. Hayes*, 4th Dist. Adams No. 17CA1056, 2019-Ohio-257, ¶¶5-14 (explaining the limits and permitted uses of OHLEG and LEADS). As stated earlier in this opinion, since the use of LEADS and OHLEG in this context is not for a criminal justice purposes or for an authorized purpose, a law enforcement officer serving as

a coroner's investigator cannot provide information contained in LEADS and OHLEG to the coroner. Thus, a deputy sheriff who serves as a coroner's investigator lacks the authority needed to access and disseminate information contained LEADS and OHLEG when serving as, and carrying out the duties of, a coroner's investigator.

*

Although I conclude that law enforcement officers may not share certain confidential information with county coroners, this is an area that the legislature could address by modifying the existing law. The legislature should perhaps consider doing so, as identifying a decedent can lead to the solving of a crime.

Conclusion

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

1. Law enforcement officers may not disseminate identification information contained in LEADS and OHLEG to the coroner or the coroner's investigators for the sole purpose of identifying a deceased person.

2. A coroner may not compel the dissemination identification information contained in LEADS and OHLEG through the subpoenaing power set forth in R.C. 313.17.
3. Deputy sheriffs who also serve as coroner investigators may not access and disseminate identification information contained in LEADS and OHLEG when serving as, and carrying out the duties of, a coroner investigator.

Respectfully,

A handwritten signature in blue ink that reads "Dave Yost". The signature is written in a cursive, flowing style with a large loop at the end of the word "Yost".

DAVE YOST
Ohio Attorney General