

**OPINION NO. 84-084****Syllabus:**

1. Client records held by the Rehabilitation Services Commission in connection with the state vocational rehabilitation services program are not public records for purposes of R.C. 149.43, because the general release of such records is prohibited by R.C. 3304.21 and 34 C.F.R. §361.49. (1976 Op. Att'y Gen. No. 76-049, syllabus, paragraph one, approved and followed.)
2. Pursuant to R.C. 1347.08, R.C. 3304.21, and 34 C.F.R. §361.49, client records held by the Rehabilitation Services Commission in connection with the state vocational rehabilitation services program may be disclosed only for limited purposes; the RSC has no general authority to disclose such records to a state or federal legislator without the consent of the person to whom the records relate.
3. The Rehabilitation Services Commission, in the exercise of its powers and duties under R.C. 3304.16, may implement a requirement that a state or federal legislator seeking disclosure of client information present a written consent to such disclosure, signed by the person to whom the information relates.

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**To: Robert L. Rabe, Administrator, Rehabilitation Services Commission,  
Columbus, Ohio**

**By: Anthony J. Celebrezze, Jr., Attorney General, December 19, 1984**

You have asked for my opinion on the question whether the Rehabilitation Services Commission (RSC) may release client information to a legislator without the written consent of the client.<sup>1</sup> Your letter indicates that the client information is confidential under both federal and state law.

The RSC was created under R.C. 3304.12 for various purposes relating to the rehabilitation of the handicapped. See R.C. 3304.16. The confidentiality of its records is governed by R.C. 3304.21, which states:

No person shall, except for the purposes of sections 3304.11 to 3304.27, inclusive, of the Revised Code, and in accordance with the rules established by the rehabilitation services commission, solicit, disclose, receive, make use of, authorize, knowingly permit, participate in, or acquiesce in the use of any list of names or information concerning persons applying for or receiving any services

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<sup>1</sup> I note that both state and federal legislative bodies have certain investigative powers. Ohio Const. art. II, §6 provides that each house of the General Assembly has "all powers necessary. . .to obtain, through committees or otherwise, information affecting legislative action under consideration or in contemplation. . .and to that end to enforce the attendance and testimony of witnesses, and the production of books and papers." See R.C. 101.41-43 (subpoena power of the chairman of a standing or select committee or subcommittee of the General Assembly or of either house). Similarly, it has been recognized that "[t]he power of the Congress to conduct investigations is inherent in the legislative process." *Watkins v. United States*, 354 U.S. 178, 187 (1957). It is, however, my understanding that your question concerns a state or federal legislator who requests client information on his own behalf or that of a constituent, rather than on behalf of the legislative body which he serves, and that his purpose is something apart from an investigatory activity of the legislature or one of its committees. I am, therefore, not considering what duties the RSC might have to disclose client information to a legislative body.

from the commission, which information is directly or indirectly derived from the records of the agency or is acquired in the performance of the person's official duties.

Pursuant to R.C. 3304.21, information concerning clients of the RSC may not be disclosed except for the purposes of R.C. 3304.11 to R.C. 3304.27 and in accordance with rules established by the RSC. R.C. 3304.11 through R.C. 3304.27 govern the operation of the RSC. R.C. 3304.16 authorizes the RSC to develop rules, to administer federal acts relating to rehabilitation of the handicapped, to take appropriate action to guarantee rights of and services to handicapped persons, and to plan, establish, and operate programs, facilities, and services relating to vocational rehabilitation. Nothing in R.C. 3304.11 through R.C. 3304.27 suggests that client information held by the RSC may be disclosed simply upon the request of persons who are not clients, and nothing in R.C. 3304.11 through R.C. 3304.27 suggests that legislators have special rights to disclosure of information held by the RSC. I am aware of no rules of the RSC which address this matter.<sup>2</sup> I conclude, therefore, that, as a general matter, R.C. 3304.21 prohibits the release of client information by the RSC to persons who are not clients, and that R.C. 3304.21 contains no provision which grants a legislator a general right to receive client information held by the RSC.

Among the duties of the RSC is that of serving "as the sole state agency designated to administer the plan under the 'Rehabilitation Act of 1973,' 87 Stat. 355, 29 U.S.C. 701, as amended." R.C. 3304.16(D). R.C. 3304.16(K)(5) authorizes the RSC to take necessary or appropriate action to comply with any requirements necessary to obtain federal funds in the maximum amount and most advantageous proportion possible. It is my understanding that the client records about which you have inquired are held by the RSC in the exercise of its duty to administer the plan under the Rehabilitation Act of 1973, as amended. 34 C.F.R. Part 361 contains regulations implementing that Act and governing the state vocational rehabilitation services program. 34 C.F.R. §361.2 provides that, to be eligible for federal grants under Title I of that Act, a state must submit an approvable state plan. 34 C.F.R. §361.49 sets forth standards of confidentiality which such a plan must satisfy. It states, in pertinent part:

(a) General provisions. The State plan must assure that the State agency and the State unit will adopt and implement policies and procedures to safeguard the confidentiality of all personal information, including photographs and lists of names. These policies and procedures must assure that:

(1) Specific safeguards protect current and stored personal information;

(2) All applicants, clients, representatives of applicants or clients, and, as appropriate, service providers, cooperating agencies, and interested persons are informed of the confidentiality of personal information and the conditions for accessing and releasing this information;

(3) All applicants or their representatives are informed about the State unit need to collect personal information and the policies governing its use, including:

(i) Identification of the authority under which information is collected;

(ii) Explanation of the principal purposes for which the State unit intends to use or release the information;

(iii) Explanation of whether the individual's providing the information is mandatory or voluntary and the effects of not

<sup>2</sup> I am aware that the RSC is in the process of adopting rule 3304-2-01, relating to the confidentiality of client information, but it is my understanding that such rule will not become effective until January 7, 1985. It is, further, my understanding that the rule will provide that a client, by signing a written consent, may permit any person to have access to the client's records, and that it will contain no provisions relating particularly to disclosure to state or federal legislators.

providing requested information to the State unit;

(iv) Identification of those situations where the State unit requires or does not require informed written consent of the individual before information may be released; and

(v) Identification of other agencies to which information is routinely released.

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(5) These policies and procedures must prevail over less stringent State laws and regulations; and

(6) The State agency or the State unit may establish reasonable fees to cover extraordinary costs of duplicating records or making extensive searches, and must establish policies and procedures governing access to records.

(b) State program use. All personal information in the possession of the State agency or the designated State unit must be used only for purposes directly connected with the administration of the vocational rehabilitation program. Information containing identifiable personal information may not be shared with advisory or other bodies which do not have official responsibility for administration of the program. In the administration of the program, the State unit may obtain personal information from service providers and cooperating agencies under assurances that the information may not be further divulged, except as provided under paragraphs (c), (d) and (e) of this section;

(c) Release to involved individuals. (1) When requested in writing by the involved individual or his or her representative, the State unit must make all information in the case record accessible to the individual or release it to him or her or a representative in a timely manner. Medical, psychological, or other information which the State unit believes may be harmful to the individual may not be released directly to the individual but must be provided through his or her representative, a physician or a licensed or certified psychologist;

(2) When personal information has been obtained from another agency, or organization, it may be released only by, or under the conditions established by, the other agency or organization.

(d) Release for audit, evaluation, and research. Personal information may be released to an organization, agency, or individual engaged in audit, evaluation, or research only for purposes directly connected with the administration of the vocational rehabilitation program, or for purposes which would significantly improve the quality of life for handicapped persons, and only if the organization, agency, or individual assures that:

(1) The information will be used only for the purposes for which it is being provided;

(2) The information will be released only to persons officially connected with the audit, evaluation or research;

(3) The information will not be released to the involved individual;

(4) The information will be managed in a manner to safeguard confidentiality; and

(5) The final product will not reveal any personal identifying information without the informed written consent of the involved individual, or his or her representative.

(e) Release to other programs or authorities. (1) Upon receiving the informed written consent of the individual, the State unit may release to another agency or organization for its program purposes only that personal information which may be released to the involved individual, and only to the extent that the other agency or organization demonstrates that the information requested is necessary for its program. Medical or psychological information which the State unit believes may be harmful to the individual may be released when the other agency or organization assures the State unit that the information will be used only for the purpose for which it is being provided and will not be further released to the involved individual;

(2) The State unit must release personal information if required by Federal law;

(3) The State unit must release personal information in response to investigations in connection with law enforcement, fraud, or abuse, (except where expressly prohibited by Federal or State laws or regulations), and in response to judicial order; and

(4) The State unit may also release personal information in order to protect the individual or others when the individual poses a threat to his or her safety or to the safety of others (Sections 12(c) and 101(a)(6) of the Act; 29 U.S.C. 711(c) and 721(a)(6)). (Emphasis added.)

Thus, to satisfy federal requirements, the state must assure that the confidentiality of personal information will be safeguarded. 34 C.F.R. §361.49(a). Upon proper request, information must be made available, either directly or indirectly, to the involved individual or a person representing him, 34 C.F.R. §361.49(c), and information may be released for audit, evaluation, or research, subject to certain limitations, 34 C.F.R. §361.49(d). Release to other agencies or organizations for program purposes is limited to information which may be released to the involved individual and information which is necessary for the program. 34 C.F.R. §361.49(e)(1). The state must release information if required by federal law or in response to court order or certain types of investigations, 34 C.F.R. §361.49(e)(2), (3), and may release information for purposes of protection, 34 C.F.R. §361.49(e)(4). Nothing in 34 C.F.R. §361.49 suggests, however, that a state agency administering a state vocational rehabilitation services program is required or authorized to release client information upon the simple request of a legislator.

There are certain state provisions relating to the disclosure of information generally which should be considered in connection with your request. R.C. 149.43(B) provides that all public records shall be "made available to any member of the general public at all reasonable times for inspection." R.C. 149.43(A)(1) defines the term "[p]ublic record" as "any record that is required to be kept by any governmental unit. . . except medical records, records pertaining to adoption, probation, and parole proceedings, trial preparation records, confidential law enforcement investigatory records, and records the release of which is prohibited by state or federal law." In 1976 Op. Att'y Gen. No. 76-049, my predecessor considered whether records concerning individuals applying for or receiving services from the RSC were public records which must be made available under R.C. 149.43 and concluded that they were not because the general release of such records was prohibited by both state and federal law. I find that my predecessor's conclusion continues to be valid.<sup>3</sup> See 34 C.F.R. §361.49; R.C. 3304.21. It follows that a legislator may not, pursuant to R.C. 149.43, obtain release of client information held by the RSC.

R.C. 1347.08 provides that a person who is the subject of a personal information system maintained by a state or local agency, or his legal guardian, may inspect all personal information in the system of which the person is the subject. It permits the person to be accompanied by an individual of his choice as he makes the inspection or to authorize an attorney to inspect the information on his behalf. There are exceptions for confidential law enforcement investigatory records, trial preparation records, and records pertaining to an adoption. Medical, psychiatric, or psychological information which is likely to have an adverse effect on the person may be released to a physician, psychiatrist, or psychologist designated by the person or his legal guardian, rather than to the person himself. Nothing in R.C. 1347.08 suggests that a legislator, as such, may obtain information relating to another person, such as client information held by the RSC, pursuant to R.C. 1347.08. To the contrary, R.C. 1347.07 provides that a state or local agency "shall only use the personal information in a personal information system in a

<sup>3</sup> When 1976 Op. Att'y Gen. No. 76-049 was written, the relevant provision of federal law appeared at 45 C.F.R. §401.47. It currently appears at 34 C.F.R. §361.49. While some amendments have been made to the provision, the essential requirements of confidentiality have been preserved. R.C. 149.43 has also been amended since 1976, but the exception for "records the release of which is prohibited by state or federal law" has not been affected.

manner that is consistent with the purposes of the system," and R.C. 1347.10(A)(2) authorizes a civil action for damages against a person who directly and proximately causes harm by intentionally using or disclosing personal information from a personal information system in a manner prohibited by law.

Your letter indicates that the RSC has no hesitation in releasing information to a legislator when it has a signed written release from the client to whom the information relates. Such a policy is consistent with the requirement of 34 C.F.R. §361.49(c) that, "[w]hen requested in writing by the involved individual or his or her representative, the State unit must make all information in the case record accessible to the individual or release it to him or her or a representative in a timely manner." A signed written release establishes that the involved individual has designated the particular legislator as his representative. See R.C. 1347.08 (authorizing the disclosure of personal information to "an attorney who presents a signed written authorization" and permitting a person who wishes to exercise a right under R.C. 1347.08 to be accompanied by an individual of his choice). It is, therefore, reasonable for the RSC to implement a requirement that a state or federal legislator seeking to examine client information present a written consent to the release of such information signed by the client to whom the information relates. See R.C. 3304.16(A), (K)(5); R.C. 3304.21; note 2, *supra*. See generally State ex rel. Hunt v. Hildebrant, 93 Ohio St. 1, 112 N.E. 138 (1915) (in absence of specific directions, statutory command carries with it the implied power and authority necessary to the performance of the duty imposed).

In conclusion, it is my opinion, and you are hereby advised, as follows:

1. Client records held by the Rehabilitation Services Commission in connection with the state vocational rehabilitation services program are not public records for purposes of R.C. 149.43, because the general release of such records is prohibited by R.C. 3304.21 and 34 C.F.R. §361.49. (1976 Op. Att'y Gen. No. 76-049, syllabus, paragraph one, approved and followed.)
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3. The Rehabilitation Services Commission, in the exercise of its powers and duties under R.C. 3304.16, may implement a requirement that a state or federal legislator seeking disclosure of client information present a written consent to such disclosure, signed by the person to whom the information relates.