

## OPINION NO. 71-053

**Syllabus:**

The case files of specific investigations made by the State Highway Patrol are not "public records" within the meaning of Section 149.43, Revised Code.

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To: Robert M. Chiramonte, Supt., State Highway Patrol, Columbus, Ohio  
By: William J. Brown, Attorney General, September 10, 1971

Your request for my opinion reads as follows:

"Throughout the history of the State Highway Patrol we have conducted and recorded many investigations. Many of these investigations were made at the request of another state agency who in turn receive a summarization of the investigation. We have also referred any requests for news releases concerning these investigations to the agency that requested it be made.

"Recently, requests have been made by the news media to peruse our case files for information. If this were permitted it is rather apparent that our effectiveness as an enforcement body would be destroyed for the following reasons: (1) informants would be revealed; (2) reluctance of witnesses to give statements would be established; (3) unreliability of some witnesses not separating evidence from opinion; (4) damaging a concurrent investigation of another agency.

"These investigations, we do not feel, should be construed to be public records as stipulated in Section 149.143 of the Ohio Revised Code. We do feel in determining what constitutes a public record and whether or not police files should be construed as such that the weight of authority throughout the country clearly indicates disclosure of such information would be contrary to sound policy and in contravention of the very purpose by which and for which such data is collected.

"I, therefore, respectfully request your formal opinion as to whether or not our case investigations are to be construed as public records and, therefore, required to be made available for public scrutiny, or as we feel,

they can be construed to be classified material and not available for public scrutiny except by subpoena."

In summary, you ask whether the case files of specific investigations made by the State Highway Patrol constitute "public records" within the meaning of Section 149.43, Revised Code. That statute, which was enacted in 1963 (130 Ohio Laws, 155), 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."

Two years later the General Assembly enacted a series of statutes designed to clarify the status of the Ohio Historical Society as the administrator of the State's archives and to amplify the powers of the State Records Commission. 131 Ohio Laws, 18, 171-177, 1874, 1898 (1965). As part thereof, the General Assembly provided a further definition of "public records" and a further regulation as to their availability (Sections 149.40 and 149.44, Revised Code):

Section 149.40

"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, is a record within the meaning of sections 149.31 to 149.44, inclusive, of the Revised Code.

"Any public record which is transferred to an archival institution pursuant to sections 149.31 to 149.44, inclusive, of the Revised Code because of the historical information contained therein shall be deemed to be an archive within the meaning of these sections."

Section 149.44

"Any state records center or archival institution established pursuant to sections 149.31 and 149.33 [149.33.1] of the Revised Code is an extension of the departments, offices, and institutions of the state and all state records transferred to records centers and archival institutions shall be available for use by the originating agencies and agencies or individuals so designated by the office of origin. The state records administrator and the state archivist shall establish regulations and procedures for the operation of state records centers and archival institutions respectively."

The State Highway Patrol is given broad authority to enforce State laws on the State highways, to enforce criminal laws on state property and to report violations of various types to the proper authorities. Sections 5503.01 and 5503.02, Revised Code. It is obvious that the Highway Patrol must prepare its own investigatory case file as a basis for its report to the proper authority. But it is the report, and not the raw case file, which forms the original basis for such official action as may be taken by that authority.

Whether or not the actual report forwarded by the Highway Patrol to the proper authority constitutes a "public record", a question not raised by your letter, I think it clear that investigatory case files were not intended to be "public records". A contrary holding would fly in the face of the long-established principle against pretrial discovery of the State's evidence in a criminal case. Almost all the Highway Patrol's investigations of alleged violations will involve some possible criminal charge, and the investigatory case file will contain the State's evidence to support such charge. Should a prosecution actually be instituted, the defendant would be entitled to a bill of particulars if the charge is not sufficiently clear, Section 2941.07, Revised Code; State v. Whitmore, 126 Ohio St. 381, 388 (1933). But it is well settled that it is not the purpose of a bill of particulars to reveal the State's evidence. Fouty v. Maxwell, 174 Ohio St. 35, 38 (1962); State v. Petro, 148 Ohio St. 473, 481 (1947); State v. DeRighter, 145 Ohio St. 552, 556 (1945).

There is nothing to indicate that the General Assembly, in enacting either the original "public records" Act of 1963 (Section 149.43, supra) or the clarifying Act of 1965 (Section 149.40 and 149.44, supra), intended to overturn this established rule of criminal law. In fact, the statutory treatment of Highway Patrol reports of motor vehicle accidents points in the other direction. Section 5502.11, Revised Code, provides that the investigating patrolman shall forward a written report of such accident to the Director of Highway Safety within five days; and Section 5502.12, Revised Code, prescribes the use to be made of the report in the following terms:

"The accident reports submitted pursuant to section 5502.11 of the Revised Code shall be for the use of the director of highway safety for purposes of statistical, safety, and other studies, The director of highway safety shall furnish a copy of such report to any person claiming an interest arising out of a motor vehicle accident, or to his attorney, upon the payment of a fee of one dollar, and with respect to accidents investigated by the state highway patrol, the director of highway safety shall furnish to such person all related police reports, statements, and photographs upon the payment of said fee of one dollar and the cost of each document and photograph reproduced by said department.

"Such state highway patrol reports, statements, and photographs may, in the discretion of the director of highway safety, be withheld until all criminal prosecution has been concluded; and the director of highway safety may require proof, satisfactory to him, of the right of any applicant to be furnished such documents." (Emphasis added)

If even the patrolman's report is to be withheld until criminal proceedings are concluded, then certainly the underlying file should also be inviolate.

Furthermore, the Bureau of Criminal Identification and Investigation has been established in the Office of the Attorney General (Section 109.51, Revised Code) to assist law enforcement officers in solving crimes and controlling criminal activity (Sections 109.52 and 109.54 to 109.56, Revised Code), and it has been directed to gather information on individual criminals for that purpose (Section 109.57, Revised Code). This last section, however, specifically provides:

"\* \* \* \* \* \* \* \* \*"

"(D) The information and materials furnished to the superintendent pursuant to division (A) of this section are not public records under section 149.43 of the Revised Code."

It would be anomalous to apply the "public records" provisions of Section 149.43, supra, to the similar materials contained in the investigatory case files of the Highway Patrol. I note also that the Federal Public Records Act makes a specific exemption for "investigatory files compiled for law enforcement purposes". 5 U.S.C. 552(b) (7).

The interpretation given above is consistent with the holding of the only reported decision which has discussed the "public records" statutes which we have under consideration.

Curran v. Board of Park Commrs., 5] Ohio Op. 2d 321 (1970). In that case, the plaintiff sought to examine everything in the files of the board, but particularly its land appraisals. The Court, after referring to the language of Section 149.40, supra, to the effect that a public document is one "which serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office," went on to say, at page 323, as follows:

"So, any record which reflects action of the board, or employers at its direction, is public.

"It is clear that resolutions authorizing land purchases, contracts executing the resolutions and even outgoing mail relative to either one should be opened to public view. But it is also clear that documents originating elsewhere, including appraisals, need not be made public, even though official action is based in part upon them." (Emphasis added)

I think it clear, therefore, that the 1963 Act (Section 149.43, supra) was not intended to make everything in the files of any department of the State a "public record," and that the raw case file of a Highway Patrol investigation is not included within the meaning of that term. It may also be noted that the 1965 Act places a limitation on the availability of material sent to the State archives by a department of the State, for it provides that such material "shall" be made available for use only by the originating department "or individuals so designated by the office of origin." Section 149.44, supra. Material which comes within the definition of a "public record" must be made available to anyone who asks, whether retained by the department or stored in the archives. Other material stored in the archives must be made available only to the originating department or its designated agent.

In specific answer to your question, it is my opinion, and you are so advised that the case files of specific investigations made by the State Highway Patrol are not "public records" within the meaning of Section 149.43, Revised Code.