

OPINION NO. 2006-038**Syllabus:**

In the absence of a statute to the contrary, foreign individuals and entities domiciled in a foreign country are “persons” who are entitled to inspect and copy public records pursuant to R.C. 149.43.

To: Nick A. Selvaggio, Champaign County Prosecuting Attorney, Urbana, Ohio

By: Jim Petro, Attorney General, September 13, 2006

You have asked whether a company that is based in another country is entitled to access records in the county engineer’s office under Ohio’s public records law, R.C. 149.43. For the reasons set forth below, we conclude that foreign individuals and entities are entitled to inspect and copy public records on the same basis as Ohio citizens and entities domiciled in Ohio.

R.C. 149.43(B)(1) states that, “all public records shall be promptly prepared and made available for inspection to *any person* at all reasonable times during regular business hours” (emphasis added). R.C. 149.43 continues to use the term “person” consistently throughout when referring to who has access to public records.¹ The term, “person,” however, is not defined in R.C. 149.43, and we must look to R.C. 1.59 for a definition. *State ex rel. Steckman v. Jackson*, 70 Ohio St. 3d 420, 427, 639 N.E.2d 83 (1994). R.C. 1.59(C) states that, “[a]s used in any statute, unless another definition is provided in that statute or a related statute,” the term “person” “includes an individual, corporation, business trust, estate, trust, partnership, and association.” As the court explained in *Steckman*, “[c]learly this definition is broad and permits *anyone*, including any recognized business entity

¹ “If *any person* chooses to obtain a copy of a public record . . . the public office or person responsible for the public record shall permit *that person* to choose” the medium upon which to duplicate it. R.C. 149.43(B)(2). “When *the person* seeking the copy makes a choice . . . the public office or person responsible for the public record shall provide a copy of it in accordance with the choice made *by the person seeking the copy*.” *Id.* Upon a request for public records, “a public office or person responsible for public records shall transmit a copy of a public record to *any person* by United States mail.” R.C. 149.43(B)(3). “If *a person* allegedly is aggrieved by the failure of a public office to promptly prepare a public record and to make it available to *the person* for inspection . . . or if *a person* who has requested a copy of a public record allegedly is aggrieved by the failure of a public office or the person responsible for the public record to make a copy available to *the person* allegedly aggrieved . . . the *person* allegedly aggrieved may commence a mandamus action to obtain a judgment that orders the public office or the person responsible for the public record to comply with [R.C. 149.43(B)] and that awards reasonable attorney’s fees to *the person* that instituted the mandamus action.” R.C. 149.43(C). (Emphasis added throughout footnote.)

(defendants, newspapers, researchers, designees and/or nondesignees) to obtain records that are encompassed by R.C. 149.43(A)." *Id.* at 427. *See also* 1990 Op. Att'y Gen. No. 90-050 at 2-210 ("[t]he intended use of the information is not a permissible reason to withhold public records absent an applicable restrictive statutory provision.... a public office is prohibited from looking at the motive behind a public record request").

The language of neither R.C. 149.43 nor R.C. 1.59 suggests a limitation on who constitutes a "person," based on citizenship or domicile, and the Ohio Supreme Court recently declined, albeit implicitly, to interject such a limitation. In *State ex rel. Physicians Committee for Responsible Medicine v. Board of Trustees*, 108 Ohio St. 3d 288, 2006-Ohio-903, 843 N.E.2d 174, the "person" seeking records from the Ohio State University was a nonprofit organization, licensed in the State of Delaware. The university argued that the requesting organization had failed to register with the Ohio secretary of state as a foreign nonprofit corporation, as required by R.C. 1703.27, and thus could not bring suit pursuant to R.C. 1703.29.² The court found that the corporation was not required to register with the secretary of state because it did not exercise its "corporate privileges in this state in a continual course of transactions," and that the corporation could, therefore, bring suit to enforce the public records law. *Id.* at 292-93. The court ultimately denied the organization access because the records were "intellectual property records," not subject to mandatory disclosure pursuant to R.C. 149.43(A)(1)(m) and (A)(5). However, neither the court nor (apparently) the university contended that this out-of-state corporation was not a "person" for purposes of R.C. 1.59(C) and R.C. 149.43.

A cardinal rule of statutory construction is to give effect to the words used, to not delete words used or insert words not used. *Columbus-Suburban Coach Lines, Inc. v. Public Utilities Commission*, 20 Ohio St. 2d 125, 127, 254 N.E.2d 8 (1969). Any attempt to limit access to public records by narrowing the definition of "person" to exclude foreign individuals or entities would be especially egregious in this instance, since it would not only "insert words not used" in R.C. 149.43, but also violate the judicial admonition that R.C. 149.43 "be construed liberally in favor of broad access, and any doubt should be resolved in favor of disclosure of public records." *State ex rel. Strothers v. Wertheim*, 80 Ohio St. 3d 155, 156, 684 N.E.2d 1239 (1997).

Federal Freedom of Information Act

At times, Ohio courts will look to case law interpreting the federal freedom of information act (FOIA) (and other states' public records acts) for guidance and

² *See* R.C. 1703.27 ("[n]o foreign nonprofit corporation shall exercise its corporate privileges in this state in a continual course of transactions until it has first procured from the secretary of state a certificate authorizing it to do so"); R.C. 1703.29(A) ("no foreign corporation which should have obtained such license [under R.C. 1703.27] shall maintain any action in any court until it has obtained such license").

support in interpreting R.C. 149.43,³ and we find that examination to be helpful in this instance. FOIA defines “person,” similarly to R.C. 149.43, to include “an individual, partnership, corporation, association, or public or private organization other than an agency [of the United States government],” 5 U.S.C.A. § 551(2) (West 1996), and requires that, “each agency, upon any request for records which (i) reasonably describes such records and (ii) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed ... make the records promptly available to any person,” 5 U.S.C.A. § 552(a)(3)(A) (West Supp. 2006). *See also* 5 U.S.C.A. § 552(a)(3)(B) (West Supp. 2006) (“[i]n making any record available to a person under this paragraph, an agency shall provide the record in any form or format requested by the person if the record is readily reproducible by the agency in that form or format”).

Federal courts have consistently interpreted “person,” as defined in § 551 and used in § 552, to include foreign individuals, organizations, and even governments. *See Arevalo-Franco v. U.S. Immigration and Naturalization Service*, 889 F.2d 589, 591 (5th Cir. 1989) (“[t]here is nothing in the FOIA to indicate that Congress intended to distinguish between citizens and aliens when it enacted 5 U.S.C. § 552(a)(4)(B) and used the word ‘person’ therein”);⁴ *Military Audit Project v. Casey*, 656 F.2d 724, 730-31, n.11 (D.C. Cir. 1981) (“[u]nder the Freedom of Information Act, the identity of the requester is immaterial; for example, there is no statutory bar to the military attache of the Soviet embassy filing FOIA requests for information from the CIA and the FBI on the same basis as a United States citizen”);⁵ *Stone v. Export-Import Bank of the United States*, 552 F.2d 132 (5th Cir. 1977) (an agency of the Soviet Union was a “person” as defined in 5 U.S.C. § 551);

³ *See, e.g., State ex rel. Wilson-Simmons v. Lake County Sheriff’s Dept.*, 82 Ohio St. 3d 37, 693 N.E.2d 789 (1998); *State ex rel. Steffen v. Kraft*, 67 Ohio St. 3d 439, 619 N.E.2d 688 (1993); *State ex rel. Fant v. Enright*, 66 Ohio St. 3d 186, 610 N.E.2d 997 (1993); *International Union, United Automobile, Aerospace & Agricultural Implement Workers of America v. Voinovich*, 100 Ohio App. 3d 372, 654 N.E.2d 139 (Franklin County 1995).

⁴ 5 U.S.C.A. § 552(a)(4)(B) (West Supp. 2006) establishes jurisdiction for certain district courts to hear FOIA complaints. In *Arevalo-Franco v. U.S. Immigration and Naturalization Service*, 889 F.2d 589, 591 (5th Cir. 1989), the court concluded that, “the express language of the statute mandates a holding that the district court for the district in which an alien resides, *i.e.*, lives, or has his principal place of business, has the requisite jurisdiction to entertain an FOIA complaint.”

⁵ In 2002, 5 U.S.C.A. § 552(a)(3)(E) (West Supp. 2006) was added to FOIA, and reads: “An agency, or part of an agency, that is an element of the intelligence community (as that term is defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4))) shall not make any record available under this paragraph to (i) any government entity, other than a State, territory, commonwealth, or district of the United States, or any subdivision thereof; or (ii) a representative of a government entity described in clause (i).” Intelligence Authorization Act for FY2003, Pub. L. No. 107-306, § 312(2), 116 Stat. 2383, 2390-91 (Nov. 27, 2002). (The

Neal-Cooper Grain Co. v. Kissinger, 385 F. Supp. 769, 776 (D.D.C. 1974) (a “foreign government or an instrumentality thereof would appear to be a ‘public or private organization’ within the terms” of FOIA). *See also Doherty v. U.S. Dept. of Justice*, 596 F. Supp. 423, 427-28 (S.D.N.Y. 1984), *aff’d on other grounds*, 775 F.2d 49 (2nd Cir. 1985) (holding that, a member of the Irish Republican Army, who was convicted of murder in Ireland and sentenced to life imprisonment, who escaped from prison and came to the United States as a fugitive, and who was being held pending deportation by the INS, was not barred from bringing a FOIA complaint against the FBI in the U.S. courts, stating that, under FOIA, “what matters is the character of the requested information, not the identity of the requesting person,” and that, citizenship of the requester has “nothing to do with the merits” of a FOIA request). *Accord O’Rourke v. U.S. Dept. of Justice*, 684 F. Supp. 716, 718 (D.D.C. 1988) (a requester, who was substantially in the same situation as Mr. Doherty, “was not excluded from access to government documents under FOIA due to his status as an alien”).

Although the U.S. Supreme Court has not addressed foreign persons or entities specifically, it has made clear that, “the identity of the requesting party has no bearing on the merits of his or her FOIA request.” *U.S. Dept. of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749, 771 (1989). “The Act’s sole concern is with what must be made public or not made public” (citation omitted). *Id.* at 772.⁶ *See also National Archives and Records Administration v. Favish*, 541 U.S. 157, 172 (2004) (disclosure under FOIA “does not depend on the

“intelligence community” is defined in 50 U.S.C.A. § 401a(4) (West Supp. 2006) to include the CIA, National Security Agency, the “intelligence elements” of the armed forces and the FBI, and others.) Nonetheless, the cited decisions reflect the broad interpretation the courts afford the term “person,” in the absence of a specific statutory limitation.

⁶ The term “person” is generally interpreted within the context of who has access to records under FOIA (the requester), but the issue has also arisen with regard to the use of the term “person” in FOIA’s exceptions to disclosure. For example, in *Stone v. Export-Import Bank of the United States*, 552 F.2d 132, 136-37 (5th Cir. 1977), the court interpreted § 552(b)(4), which exempts “trade secrets and commercial or financial information obtained from a person and privileged or confidential,” as it applied to financial information obtained by a federal agency from and about an agency of the Soviet Union, the Bank for Foreign Trade. The court stated that nothing in the definition of “person” in § 551 “suggests an intention to limit its plain terms to *American* individuals and ‘public or private’ organization[s],” and that § 552(b)(4) “is not limited to protecting information obtained only from American citizens or organizations.” The court held that information submitted by the Bank for Foreign Trade to a federal agency was exempt from disclosure to a third party under § 552(b)(4).

identity of the requester. As a general rule, if the information is subject to disclosure, it belongs to all').⁷

Other States

Courts have found requesters to be entitled to access without regard to domicile or citizenship, even in jurisdictions with statutory language that defines who may access public records more narrowly than R.C. 149.43 and FOIA. For example, in Georgia, public records of a state agency must "be open for a personal inspection by any *citizen* of this state at a reasonable time and place; and those in charge of such records shall not refuse this privilege to any *citizen*" (emphasis added). O.C.G.A. § 50-18-70(b). In *Theragenics Corp. v. Department of Natural Resources*, 244 Ga. App. 829, 831, 536 S.E.2d 613, n. 6 (2000), *aff'd*, 273 Ga. 724, 545 S.E.2d 904 (2001), the court found to be immaterial the fact that the requester was an out-of-state corporation, despite the statutory use of the term "citizen." The court noted that, based on a Georgia supreme court case, which held that a citizen of the state was not disqualified from exercising his rights under the open records law "because he happens to be an employee of a nonresident corporation and may share the information received with his employer,"⁸ the state attorney general had issued an opinion that, "public records which are otherwise not exempt from disclosure should be available upon request by nonresidents as well as residents of this state. 1993 Op. Atty. Gen. 27." See also *Bryant v. Weiss*, 335 Ark. 534, 538-39, 983 S.W.2d 902 (1998) (in interpreting statutory language that granted rights under the public records law to, variously, any "citizen," the "public," any "person," or "anyone," the court summarized that, "without delving into the distinctions between the various terms used in the statutes, the Act clearly provides that anyone who requests information is entitled to it").

Instances when Identity of Requester is Relevant

We are aware that, in some limited instances, the identity of a requester is relevant to whether the requester is entitled to access certain records under R.C. 149.43. For example, an incarcerated person has no right to inspect, or obtain a copy of, a public record concerning a criminal investigation or prosecution, "unless the request to inspect or to obtain a copy of the record is for the purpose of acquiring information that is subject to release as a public record under this section and the judge who imposed the sentence or made the adjudication with respect to the person, or the judge's successor in office, finds that the information sought in the public record is necessary to support what appears to be a justiciable claim of the

⁷ In construing the statutory exceptions to disclosure under FOIA, the Court has recognized that an individual who is the subject of a record held by the government may have access to that record while third parties do not. See *U.S. Dept. of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749 (1989) (construing 5 U.S.C. § 552(b)(7)(C)); *U.S. Dept. of Justice v. Julian*, 486 U.S. 1 (1988) (construing § 552(b)(5)).

⁸ *Atchison v. Hospital Authority of the City of St. Mary's*, 245 Ga. 494, 495, 265 S.E.2d 801 (1980).

person.” R.C. 149.43(B)(4). See *State ex rel. Brown v. Rhodes*, Hancock App. No. 5-05-25, 2006-Ohio-3394, 2006 Ohio App. LEXIS 3309 (applying R.C. 149.43(B)(4), limiting the ability of incarcerated persons to access certain public records). Also, only a journalist has a right to access the residential address of a peace officer, firefighter, or EMT, and, if the spouse, a child or former spouse of a peace officer, firefighter, or EMT is employed by a public office, the name and address of the employer of the family member. R.C. 149.43(B)(5). The journalist’s request must be in writing, include information about the journalist and his employer, and state that disclosure of the information “would be in the public interest.” R.C. 149.43(B)(5). See also R.C. 313.10 (exceptions for next of kin, journalists, and insurers to access certain autopsy records otherwise made confidential); R.C. 2923.129(B) (exception for journalists to access name, county of residence, and date of birth of persons to whom the sheriff has issued a license to carry a concealed handgun, such information otherwise made confidential).⁹ These statutory exceptions are carefully delineated, however, and depend in no way upon the citizenship or domicile of the requester. Foreign requesters must be provided access to public records, or denied access to public records under applicable exceptions, on the same basis as Ohio requesters.

County’s Release of Information to Non-citizens

Your second question is, if foreign requesters are entitled to access public records, how can public offices ensure compliance with R.C. 149.43(A)(1)(v). You are concerned in particular about possible restrictions on the county’s transfer to foreign countries of sensitive information or data that may have originated with the State Department, Defense Department, CIA, or other federal agency.

Under the provision to which you refer, R.C. 149.43(A)(1)(v), a record, the release of which is prohibited by state or federal law, is not a public record. In other words, a record made confidential under the federal or state constitution or by federal or state statute is not a public record, and indeed, an office or agency has an

⁹ In addition to the special status conferred upon journalists by these statutes, a journalist who successfully pursues a mandamus action to secure access to public records may be in a favorable position at the time a court considers the award of attorney’s fees pursuant to R.C. 149.43(C). An award of attorney fees is discretionary with the court and is determined in part “by the presence of a public benefit conferred by [the requester] seeking the disclosure.” *State ex rel. Multimedia, Inc. v. Whalen*, 51 Ohio St. 3d 99, 100, 554 N.E.2d 1321 (1990). When examining the issue of “public benefit,” courts have cited as relevant the requester’s identity as a member of the media. In *Whalen*, the court found the public benefit to be “manifest,” since the requester, a commercial television station, brought the action “so that complete and accurate news reports can be broadcast and reported to the public.” *Id.* at 100. This reasoning has also been applied where the successful requester was a newspaper. *State ex rel. Cincinnati Enquirer v. Dupuis*, 98 Ohio St. 3d 126, 2002-Ohio-7041, 781 N.E.2d 163, at ¶33; *State ex rel. Beacon Journal Publishing Co. v. Maurer*, 91 Ohio St. 3d 54, 58, 741 N.E.2d 511 (2001). *But cf.* note, *infra*.

affirmative duty to prevent its disclosure to the public. *See* 2005 Op. Att’y Gen. No. 2005-047; 2004 Op. Att’y Gen. No. 2004-045. R.C. 149.43(A)(1)(v), along with the federal or state law prohibiting release, certainly provide authority for a public office to withhold information that has been designated by federal or state law as confidential. “Sensitive” information may be withheld from disclosure if it falls within R.C. 149.43(A)(1)(v) or another exemption, but, absent a statute providing otherwise, the information must be withheld from all, rather than based on the identity of the requester.¹⁰

With regard to restrictions on the disclosure of information provided to the county by a federal agency, we note that FOIA applies to federal agencies, but not to state and local governmental agencies. *St. Michael’s Convalescent Hospital v. State of California*, 643 F.2d 1369 (9th Cir. 1981); *Davidson v. State of Georgia*, 622 F.2d 895 (5th Cir. 1980). For example, FOIA’s exemption for “geological and geophysical information and data, including maps, concerning wells” would not apply to the county engineer. 5 U.S.C.A. § 552(b)(9) (West Supp. 2006). Nor would 5 U.S.C.A. § 552(a)(3)(E) (West Supp. 2006), which prohibits a federal intelligence agency from making records available to foreign governments and their representatives.¹¹ *See* note , *supra*.

There are, however, federal statutes that restrict local agencies from disclosing certain information given to them by federal agencies. For example, “[I]and remote sensing information provided by the head of a department or agency of the United States to a State, local, or tribal government may not be made available to the general public under any State, local, or tribal law relating to the disclosure of information or records.” Ronald W. Reagan National Defense Authorization Act for FY2005, Pub. L. No. 108-375, § 914(c), 118 Stat. 1811, 2029 (Oct. 28, 2004). Again, note, that such information is made confidential regardless of who is requesting it.

It is beyond the scope of this opinion to identify every law that restricts the disclosure of federal or state information. Nonetheless, the county engineer, like all public offices, has a duty, to become familiar and comply with all applicable federal and state laws that prohibit the release of records in his custody to foreign individuals or entities, or that otherwise limit access to the office’s records or information.

¹⁰ With regard to the treatment of security matters under state law, we direct your attention to recently enacted legislation, Am. Sub. S.B. 9, 126th Gen. A. (2006) (eff. April 14, 2006). *See also* R.C. 149.433(B) (a record kept by a public office that is a security or infrastructure record, as defined therein, “is not a public record under [R.C. 149.43] and is not subject to mandatory release or disclosure under that section”).

¹¹ We are unaware of any statute, similar to 5 U.S.C. § 552(a)(3)(E), note , *supra*, which prohibits the state or local government from providing records to foreign governments.

Waiver

Voluntary Disclosure

You have stated in your request for an opinion that, much of the information about which the county is concerned is “available through the GIS [geographic information systems] link on the Engineer’s website.” Once a public office makes information available on its website (without limiting access thereto by use of passwords or otherwise), the office would have difficulty justifying a refusal to provide that information to a particular requester. Indeed, the courts have found that where an office voluntarily discloses information that is exempt from mandatory disclosure, the office has waived any right to claim the exemption. *State ex rel. Zuern v. Leis*, 56 Ohio St. 3d 20, 22, 564 N.E.2d 81 (1990) (“[v]oluntary disclosure can preclude later claims that records are exempt from release as public records... Even if the records were otherwise exempt, respondents have waived any right to exemption by previously voluntarily disclosing the records”). *Accord State ex rel. Cincinnati Enquirer v. Dupuis*, 98 Ohio St. 3d 126, 2002-Ohio-7041, 781 N.E.2d 163.¹² See also *State ex rel. WLWT-TV5 v. Leis*, 77 Ohio St. 3d 357, 361, 673 N.E.2d 1365 (1997) (“[a]bsent evidence that respondents have already disclosed the investigatory records to the public and thereby waived application of certain exemptions, the exemptions are fully applicable”) (emphasis added). Cf. *State ex rel. Dispatch Printing Co. v. Johnson*, 106 Ohio St. 3d 160, 2005-Ohio-4384, 833 N.E.2d 274, at ¶38 (prior disclosure of a non-record does not transform it into a record nor does the prior release of personal information extinguish an individual’s privacy interest in that information). The county engineer must consider this possibility of waiver when determining what information to put on his web site (or otherwise releasing information for which he is responsible).

Relation of Waiver to Award of Attorney’s Fees

We must also advise that, a public office that withholds records from one

¹² In a case involving whether the cities of Cleveland and Youngstown had waived an exemption, the fact that the requesters were newspapers may have worked to their disadvantage. In *State ex rel. Plain Dealer Publishing Co. v. City of Cleveland*, 106 Ohio St. 3d 70, 2005-Ohio-3807, 831 N.E.2d 987, two newspapers sought from the cities photograph identification cards of certain city police officers. The court upheld the cities’ position that the photographs were exempt from disclosure as “peace officer, firefighter, or EMT residential and familial information” pursuant to R.C. 149.43(A)(1)(p) and (A)(7). The court then rejected the newspapers’ argument that the cities had waived the exemption because some members of the public already knew the physical characteristics of the police officers, stating that, “there is a substantial difference between an individual being identified as a police officer due to his uniform, vehicle, or badge number, and being identified by having his or her photograph published throughout Ohio.” *Id.* at ¶61. This statement appears to be dicta, however, because the court first found that the specific photo identification cards had not, in fact, been previously released by the cities, and the cities had not waived the exemption for peace officer residential and familial information.

requester after it has disclosed the records to other persons may be more likely to have attorney's fees assessed against it pursuant to R.C. 149.43(C) if the requester successfully brings a mandamus action. An award of attorney fees is discretionary with the court and is determined in part by the "reasonableness and good faith" of the agency "in refusing to make disclosure." *State ex rel. Multimedia, Inc. v. Whalen*, 51 Ohio St. 3d 99, 100, 554 N.E.2d 1321 (1990). In *Dupuis*, the court found a lack of reasonableness where the city claimed the record was exempt from disclosure after it had already voluntarily disclosed the record to other persons. 98 Ohio St. 3d at ¶33.

Good Sense Rule

We certainly understand the county's concern about maintaining appropriate security measures, and would be remiss if we did not discuss the "good sense rule" that has been recognized by the Ohio Supreme Court, although the scope of that rule has been, to date, very narrowly delineated. In *State ex rel. Keller v. Cox*, 85 Ohio St. 3d 279, 282, 707 N.E.2d 931 (1999), the court found that personal information in the files of police officers "should not be available to a defendant who might use the information to achieve nefarious ends. This information should be protected not only by the constitutional right of privacy, but, also, we are persuaded that there must be a 'good sense' rule when such information about a law enforcement officer is sought by a defendant in a criminal case." *Id.* at 282. The court again referred to the "good sense" rule in *State ex rel. McCleary v. Roberts*, 88 Ohio St. 3d 365, 725 N.E.2d 1144 (2000), which involved a records request for names and other personally identifying information that was kept by the city on children participating in a city recreation program. Citing *Keller* and its good sense rule, and the Sixth Circuit case of *Kallstrom v. City of Columbus*,¹³ upon which *Keller* was based, the court noted that, "[t]he officers' personnel files in *Keller* and *Kallstrom* contained essentially the same type of information, *i.e.*, home addresses, phone numbers, names of family members, and medical records, as that contained in the [city] Department's database. As did the situations in *Keller* and *Kallstrom*, a release of the requested information by the Department in this matter places those who are the subject of the records request *at risk of irreparable harm*, albeit not necessarily by [the requester]." (Emphasis added.) *Id.* at 371. The court continued: "The case now before us is no different. Because of the inherent vulnerability of children, release of personal information of this nature creates an unacceptable risk that a child could be victimized. We cannot in good conscience take that chance." *Id.* at 372.

These cases involved personal information that implicated the constitutionally protected privacy interests of individuals who were the subjects of the records, which we assume would not be the case with records held by the county engineer. The court, however, did cite the concern that, if the information were released to particular requesters, they might use the information "to achieve nefarious ends," specifically the infliction of irreparable bodily harm. If the county engineer believes that a requester might use the information "to achieve nefarious ends," and that

¹³ *Kallstrom v. City of Columbus*, 136 F.3d 1055 (6th Cir. 1998).

disclosure of records in his possession threatened the lives and personal security of the citizenry, he could argue for application of the “good sense” rule as a basis for refusing to release those records. We cannot predict, however, how the courts would receive such an argument, given a specific set of facts.

Conclusion

In conclusion, it is my opinion, and you are advised that, in the absence of a statute to the contrary, foreign individuals and entities domiciled in a foreign country are “persons” who are entitled to inspect and copy public records pursuant to R.C. 149.43.