

OPINION NO. 90-050**Syllabus:**

1. Pursuant to R.C. 149.43, the recorded name, address, and telephone number of each employee of a public school district is a public record open to inspection by any person.
2. "Any person" under 149.43, pursuant to R.C. 1.59, includes individuals, corporations, business trusts, estates, trusts, partnerships and associations.
3. Absent a statutory restriction, the motive of the person requesting inspection of, or the receipt of, a copy of a public record is irrelevant and may not properly be used as an excuse to deny access.
4. Absent a statutory restriction, a person may not be denied access to information in a public record because such person indicates the intended use of the information is commercial or professional sales solicitation.

To: Russell B. Wiseman, Crawford County Prosecuting Attorney, Bucyrus, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, July 13, 1990

I have before me your request for my opinion concerning personal information about public employees. Specifically, you are concerned whether the names, addresses, and telephone numbers of public school employees, as maintained in records, comprise a public record that must be made available to a company that plans to market financial products directly to the individual employees.

R.C. 149.43(A)(1) defines "public record," in relevant part, as "*any record that is kept by any public office, including, but not limited to, ...school district units*" (emphasis added). This definition, however, expressly excepts:

medical records, records pertaining to adoption, probation, and parole proceedings, records pertaining to actions under section 2151.85 of the Revised Code and to appeals of actions arising under that section, records listed in division (A) of section 3107.42 of the Revised Code, trial preparation records, confidential law enforcement investigatory records, and records the release of which is prohibited by state or federal law.

The term "record," as used in R.C. 149.43(A)(1), is broadly defined by R.C. 149.011(G) to include "any document, device, or item, regardless of physical form or characteristic, created 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."

To the extent that a public office keeps the names, addresses, and telephone numbers of its employees in order to fulfill its statutory duties and administrative needs,¹ such information comprises a public record. This type of information,

¹ A public office has a duty to keep only such information regarding its employees as is necessary for the public office to perform its governmental function. This mandate is emphasized in R.C. 1347.05(H), which

which is included as part of what is commonly referred to as "personnel records," has been determined to have no general exception under R.C. 149.43 or other provision of state or federal law. See *State v. Bundy*, 20 Ohio St. 3d 51, 485 N.E.2d 1039 (1985) (civil service personnel records); *State ex rel. Dispatch Printing Co. v. Wells*, 18 Ohio St. 3d 382, 481 N.E.2d 632 (1985) (employee civil service file including demotion order); *State ex rel. Petty v. Wurst*, 49 Ohio App. 3d 59, 550 N.E.2d 214 (Butler County 1989) (name, classification or job title, salary rate and total compensation of each and every employee of a public office paid from public funds); *Bowman v. Parma Bd. of Educ.*, 44 Ohio App. 3d 169, 542 N.E.2d 663 (Cuyahoga County 1988) (employee personnel file purportedly closed by employment separation agreement); *State ex rel. Sullivan v. Wilson*, 24 Ohio Law Abs. 208 (C.P. Hamilton County 1937) (civil service roster); 1986 Op. Att'y Gen. No. 86-089 (employee personnel file); 1981 Op. Att'y Gen. No. 81-038 (records which would normally be kept in employee personnel files); 1981 Op. Att'y Gen. No. 81-006 (employee address and payroll records). See also *State ex rel. Beacon Journal Pub. Co. v. Akron Metro. Housing Auth.*, No. 13757, slip op. (Ct. App. Summit County April 13, 1988) (unreported), *aff'd*, 42 Ohio St. 3d 1, 535 N.E.2d 1366 (1989) (application for employment and resumes).

Access by the public to public records is controlled by R.C. 149.43(B), which states:

All public records shall be promptly prepared and made available for inspection to *any person* at all reasonable times during regular business hours. Upon request, a person responsible for public records shall make copies available at cost, within a reasonable period of time. In order to facilitate broader access to public records, governmental units shall maintain public records in such a manner that they can be made available for inspection in accordance with this division. (Emphasis added).

While R.C. Chapter 149 does not define "any person" who may request access to public records, R.C. 1.59 enumerates "an individual, corporation, business trust, estate, trust, partnership, and association" as each being a "person." Moreover, the word "any" has various meanings depending on the context in which it is used. 1990 Op. Att'y Gen. No. 90-015; see also *Wachendorf v. Schaver*, 149 Ohio St. 231, 78 N.E.2d 370 (1948). "Any" may mean "all" or "every" in the context of a specific statute, see, e.g., *Motor Cargo, Inc. v. Board of Township Trustees*, 52 Ohio Op. 257, 117 N.E.2d 224 (C.P. Summit County 1953), especially where that statute is mandatory in nature. R.C. 149.43(B), in its use of the term "any person," is sufficiently broad to encompass individuals and the various types of business associations operating in Ohio. The express statement of intent of the Public Records Act, as stated in R.C. 149.43(B), "to facilitate broader access to public

requires every state and local agency that maintains a personal information system to "[c]ollect, maintain, and use only personal information that is necessary and relevant to the functions that the agency is required or authorized to perform by statute, ordinance, code, or rule, and eliminate personal information from the system when it is no longer necessary and relevant to those functions."

R.C. 149.40 also prohibits the creation of unnecessary records by stating:

The head of each public office shall cause to be made only such records as are necessary for the adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency and for the protection of the legal and financial rights of the state and persons directly affected by the agency's activities.

I have been informed that the public school districts relevant to this request routinely keep the names, addresses, and telephone numbers of their employees for administrative purposes.

records," coupled with the lack of a definition of "person" more restrictive than that in R.C. 1.59, allows any or all persons, including a for-profit association, to inspect and receive copies of public records.

It is irrelevant that the prospective use of the information is for commercial purposes. Ohio common law has long recognized that the public nature of public records does not require a person requesting access to such records to have a direct personal interest in the information. *See State ex rel. Withworth Bros. Co. v. Dittney*, 12 Ohio N.P. (n.s.) 319 (C.P. Franklin County 1911). The intended use of the information is not a permissible reason to withhold public records absent an applicable restrictive statutory provision.² *See Wells v. Lewis*, 12 Ohio Dec. 170 (Super. Ct. Cincinnati 1901). 1974 Op. Att'y Gen. No. 74-097, at 2-390, addressed the question of access where "the person requesting such record specifically indicates the purpose of such request is to make use of the record for commercial or professional sales solicitation." In response, my predecessor stated that "[t]he public's right to inspect...records pursuant to R.C. 149.43 may not be restricted...because of the intended purpose of such inspection." Op. No. 74-097 (at syllabus).

Since a public office is prohibited from looking at the motive behind a public record request and a company is a person under R.C. 149.43, a company is entitled to inspect and receive copies of public records for sales solicitation. Since the names, addresses, and telephone numbers of a public school district's employees, as maintained in records, are public records, a public office must make them available to such a company regardless of the company's intended use of the records.

It is, therefore, my opinion, and you are hereby advised, that:

1. Pursuant to R.C. 149.43, the recorded name, address, and telephone number of each employee of a public school district is a public record open to inspection by any person.
2. "Any person" under 149.43, pursuant to R.C. 1.59, includes individuals, corporations, business trusts, estates, trusts, partnerships and associations.
3. Absent a statutory restriction, the motive of the person requesting inspection of, or the receipt of, a copy of a public record is irrelevant and may not properly be used as an excuse to deny access.
4. Absent a statutory restriction, a person may not be denied access to information in a public record because such person indicates the intended use of the information is commercial or professional sales solicitation.

² *See, e.g.*, R.C. 149(A)(2)(d) which provides that confidential law enforcement investigatory records comprised of "[i]nformation that would endanger the life or safety of law enforcement personnel, a crime victim, a witness, or confidential information source" is not a public record.