

**OPINION NO. 84-077**

**Syllabus:**

1. R.C. 1347.04 does not operate to exempt juvenile courts from the provisions of R.C. Chapter 1347 with respect to the courts'

records of matters pertaining to juveniles; however, if a juvenile court has any personal information systems which are comprised of investigatory material compiled for law enforcement purposes, such systems are exempt from R.C. Chapter 1347 under R.C. 1347.04(A)(1)(e).

2. Under R.C. 1347.08, a juvenile court must permit a juvenile or a duly-authorized attorney who represents the juvenile to inspect court records pertaining to the juvenile unless the records are exempted under R.C. 1347.04(A)(1)(e) or R.C. 1347.08(C) or (E)(2). Under R. Juv. P. 37(B), the records may not, however, be put to any public use except in the course of an appeal or as authorized by order of the court.

**To: William L. Thomas, Belmont County Prosecuting Attorney, St. Clairsville, Ohio**

**By: Anthony J. Celebrezze, Jr., Attorney General, December 18, 1984**

I have before me your letter requesting an opinion on the following question: "Do the mandatory disclosure requirements provided for in section 1347.08, Ohio Revised Code, apply to compel the disclosure of court records held by a Probate-Juvenile Court to an attorney representing a minor?" I understand that your reference to a "Probate-Juvenile Court" is to a juvenile court which is a court of record within the division of probate of the court of common pleas, in contrast with a juvenile court which is within the division of domestic relations of the court of common pleas or which is a separate division of the court of common pleas. See R.C. 2151.01(A)(1); R.C. 2151.07. I am, therefore, in this opinion, considering only records which are held by a juvenile court, and not records which may be held by a probate court but are not juvenile court records.

Let me note, first, that I am an officer of the executive branch of government, see, e.g., Ohio Const. art. III, §1; State ex rel. Doerfler v. Price, 101 Ohio St. 50, 128 N.E. 173 (1920), and that, as such, I consider it inappropriate to presume to advise members of the judicial branch with respect to the exercise of their judicial power. See generally Maloney v. Rhodes, 45 Ohio St. 2d 319, 345 N.E.2d 407 (1976); Knapp v. Thomas, 39 Ohio St. 377 (1883); 1972 Op. Att'y Gen. No. 72-097. I do, however, find it within my authority to render, in general terms, my opinion concerning the proper interpretation of R.C. 1347.08. See, e.g., 1981 Op. Att'y Gen. No. 81-038; 1980 Op. Att'y Gen. No. 80-096.

R.C. 1347.08 states, in relevant part:

(A) Every state or local agency that maintains a personal information system, upon the request and the proper identification of any person who is the subject of personal information in the system, shall:

(1) Inform the person of the existence of any personal information in the system of which he is the subject;

(2) Except as provided in divisions (C) and (E)(2) of this section, permit the person, his legal guardian, or an attorney who presents a signed written authorization made by the person, to inspect all personal information in the system of which he is the subject;

....  
(C) A state or local agency, upon request, shall disclose medical, psychiatric, or psychological information to a person who is the subject of the information or to his legal guardian, unless a physician, psychiatrist, or psychologist determines for the agency that the disclosure of the information is likely to have an adverse effect on the person, in which case the information shall be released to a physician, psychiatrist, or psychologist who is designated by the person or by his legal guardian.  
....

(E) . . .

(2) This section does not provide a person who is the subject of personal information maintained in a personal information system, his legal guardian, or an attorney authorized by the person, with a right to inspect or have copied, or require an agency that maintains a personal information system to permit the inspection of or to copy, a confidential law enforcement investigatory record or trial preparation record, as those terms are defined in divisions (A)(2) and (4) of section 149.43 of the Revised Code.

(F) This section does not apply to the papers, records, and books pertaining to an adoption, which under section 3107.17 of the Revised Code are subject to inspection only upon consent of the court.

Thus, with specified exceptions, R.C. 1347.08 grants a person, his legal guardian, or an attorney authorized by the person the right to inspect all personal information dealing with that person which is held by a state or local agency in a personal information system. R.C. 1347.08 does not specify that the right granted to a minor may be exercised only by his parent or guardian. Thus, I find that a minor is a person for purposes of R.C. 1347.08 and that he, or a duly-authorized attorney representing him, may exercise all rights granted thereby. See generally Restatement (Second) of Agency §20 (1958); see also Planned Parenthood of Central Missouri v. Danforth, 428 U.S. 52 (1976); Foe v. Vanderhoof, 389 F.Supp. 947 (D. Colo. 1975); Kozak v. Lutheran Children's Aid Society, 164 Ohio St. 335, 130 N.E.2d 796 (1955).

The initial issue to be considered in responding to your question is whether a juvenile court is a "state or local agency that maintains a personal information system," for purposes of R.C. 1347.08. R.C. 1347.01 defines the relevant terms as follows:

As used in this chapter:

(A) "State agency" means the office of any elected state officer and any agency, board, commission, department, division, or educational institution of the state.

(B) "Local agency" means any municipal corporation, school district, special purpose district, or township of the state or any elected officer or board, bureau, commission, department, division, institution, or instrumentality of a county.

. . . .

(D) "Maintains" means state or local agency ownership of, control over, responsibility for, or accountability for systems and includes, but is not limited to, state or local agency depositing of information with a data processing center for storage, processing, or dissemination. An agency "maintains" all systems of records that are required by law to be kept by the agency.

(E) "Personal information" means any information that describes anything about a person, or that indicates actions done by or to a person, or that indicates that a person possesses certain personal characteristics, and that contains, and can be retrieved from a system by, a name, identifying number, symbol, or other identifier assigned to a person.

(F) "System" means any collection or group of related records that are kept in an organized manner and that are maintained by a state or local agency, and from which personal information is retrieved by the name of the person or by some identifying number, symbol, or other identifier assigned to the person. "System" includes both records that are manually stored and records that are stored using electronic data processing equipment. "System" does not include collected archival records in the custody of or administered under the authority of the Ohio historical society, published directories, reference materials or newsletters, or routine information that is maintained for the purpose of internal office administration, the use of which would not adversely affect a person.

You have raised the basic question whether R.C. Chapter 1347 applies to any portion of the judicial branch of government. I find that it does. R.C. 1347.04(A)(1)(b), quoted below, expressly exempts the criminal courts from the provisions of R.C. Chapter 1347, except as provided in R.C. 1347.04(A)(2). Further, R.C. 1347.08(F), quoted above, expressly excludes from the application of R.C. 1347.08 materials pertaining to an adoption, which under R.C. 3107.17 are subject to inspection only upon consent of the court. The presence of these provisions makes it clear that, apart from relevant exceptions, the General Assembly intended that the provisions of R.C. Chapter 1347 be applicable to the courts. See generally State ex rel. Bohan v. Industrial Commission, 147 Ohio St. 249, 251, 70 N.E.2d 888, 889 (1946) ("[i]t is to be presumed that each word in a statute was placed there for a purpose").

A juvenile court is a court of record within the division of domestic relations or the division of probate of the court of common pleas, except in Cuyahoga and Hamilton counties, where the juvenile courts are separate divisions of the courts of common pleas. R.C. 2151.01(A)(1); R.C. 2151.07. Juvenile courts are part of the state-wide judicial system, but they are established on a county basis, are funded by the counties, and have, for some purposes, been considered county bodies. See generally Ohio Const. art. IV, §§4, 6; R.C. 2101.01; R.C. 2151.01; R.C. 2301.01-03; 1983 Op. Att'y Gen. 83-074. It is clear, therefore, that a juvenile court is a state or local agency for purposes of R.C. Chapter 1347.

Records kept by a court are clearly "maintained" by it within the meaning of R.C. 1347.01(D). Records which may be retrieved by the name of the person or an identifying number, symbol or other identifier assigned to the person constitute a "system" within the meaning of R.C. 1347.01(F).<sup>1</sup> As was noted by my predecessor in Op. No. 80-096, "personal information," as defined in R.C. 1347.01(E), is a very comprehensive term. Thus, records held by a juvenile court which relate to a particular individual would seem to constitute "any information that describes anything about a person, or that indicates actions done by or to a person" and to come within this definition. It appears, then, that, unless otherwise exempted, a juvenile court is subject to the provisions of R.C. 1347.08 with respect to records relating to particular individuals.

R.C. 1347.04 establishes certain exemptions from the application of R.C. 1347.08 and other provisions of Chapter 1347. It states, in part:

(A)(1) Except as provided in division (A)(2) of this section, the

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<sup>1</sup> The argument might be made that, in making any courts subject to the provisions of R.C. Chapter 1347, the General Assembly has encroached upon the judicial power vested in the courts by Ohio Const. art. IV, §1, and, thus, that the inclusion of any courts in the statutory scheme established by R.C. Chapter 1347 is unconstitutional. See generally State ex rel. Johnston v. Taulbee, 66 Ohio St. 2d 417, 420-21, 423 N.E.2d 80, 82 (1981) ("the courts possess inherent powers to effectuate an orderly and efficient administration of justice without being financially or procedurally inhibited by the General Assembly") (emphasis in original; footnote and citations omitted); Schario v. State, 105 Ohio St. 535, 138 N.E. 63 (1922). I make no comment upon the merits of this argument and note simply that, as a member of the executive branch of government, I consider it inappropriate to purport to determine the constitutionality of state statutes, see generally 1976 Op. Att'y Gen. No. 76-021, and that enactments of the General Assembly are presumed to be constitutional, see State ex rel. Dickman v. Defenbacher, 164 Ohio St. 142, 128 N.E.2d 59 (1955).

<sup>2</sup> Under R.C. 2151.358, when records are sealed or expunged, all index references to the case and the person shall be deleted. Thus, it appears that such records would not be a part of the personal information system maintained by the court for purposes of R.C. Chapter 1347. Certain rights to inspection of such records are set forth in R.C. 2151.358. See generally 1983 Op. Att'y Gen. No. 83-100.

- following are exempt from the provisions of this chapter:
  - (a) Any state or local agency, or part of a state or local agency, that performs as its principal function any activity relating to the enforcement of the criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend criminals;
  - (b) The criminal courts;
  - (c) Prosecutors;
  - (d) Any state or local agency or part of any state or local agency that is a correction, probation, pardon, or parole authority;
  - (e) Personal information systems that are comprised of investigatory material compiled for law enforcement purposes by agencies that are not described in divisions (A)(1)(a) and (A)(1)(d) of this section.
- (2) A state agency is not exempt from complying with section 1347.03 of the Revised Code. A part of a state or local agency that does not perform, as its principal function, an activity relating to the enforcement of the criminal laws is not exempt under this section.

R.C. 1347.03 contains provisions requiring that every state agency that maintains a personal information system file notice of that system with the Director of Administrative Services.

The term "criminal courts," as used in R.C. 1347.08(A)(1)(b), is not defined by statute. A juvenile court has certain criminal jurisdiction, see, e.g., R.C. 2151.23(A)(5) ("[t]o hear and determine all criminal cases charging adults with the violation of any section of Chapter 2151. of the Revised Code"), and it may be that, with respect to such matters, a juvenile court could be considered a criminal court for purposes of R.C. 1347.04(A)(1)(b). Your question relates to records pertaining to a minor, however, and although there may be some criminal aspects to a juvenile proceeding, see, e.g., McKeiver v. Pennsylvania, 403 U.S. 528 (1971), Ohio law pertaining to such proceedings clearly does not classify them as criminal. R.C. 2151.01, which governs juvenile courts, states expressly:

The sections in Chapter 2151. of the Revised Code, with the exception of those sections providing for the criminal prosecution of adults, shall be liberally interpreted and construed so as to effectuate the following purposes:

. . . .  
 (B) To protect the public interest in removing the consequences of criminal behavior and the taint of criminality from children committing delinquent acts and to substitute therefor a program of supervision, care, and rehabilitation;  
 . . . .

See R.C. 2151.26, 2151.358; Cope v. Campbell, 175 Ohio St. 475, 196 N.E.2d 457 (1964); State v. Hale, 21 Ohio App. 2d 207, 256 N.E.2d 239 (1969); 1982 Op. Att'y Gen. No. 82-062. I conclude, therefore, that, with respect to records of matters pertaining to juveniles, a juvenile court is not a criminal court for purposes of R.C. 1347.04(A)(1)(b). For essentially the same reasons, I conclude that a juvenile court is not an agency which "performs as its principal function any activity relating to the enforcement of the criminal laws," so that it does not come within R.C. 1347.04(A)(1)(a). The activities of a juvenile court are only incidentally related to enforcing the criminal laws. Its principal functions relate to the supervision and care of juveniles. R.C. 2151.01. Thus, a juvenile court is not made exempt from R.C. Chapter 1347 by R.C. 1347.04(A)(1)(a) or (b), nor, for obvious reasons, is it made exempt by R.C. 1347.04(A)(1)(c), which relates to prosecutors.

At first glance, the exemption set forth in R.C. 1347.04(A)(1)(d), pertaining to a probation authority, might appear to apply to many of the records of a juvenile court. See, e.g., R.C. 2151.14 (establishment of probation department under the direction of the juvenile judge). On further reflection, however, it appears that R.C. 1347.04(A)(2), referenced in R.C. 1347.04(A)(1), renders this exception largely inapplicable, since it states: "A part of a state or local agency that does not perform, as its principal function, an activity relating to the enforcement of the criminal laws is not exempt under this section." As noted above, a juvenile court

has very limited criminal functions. I do not think that it may fairly be concluded that any part of a juvenile court maintaining records pertaining to juveniles, including the probation department, performs "as its principal function, an activity relating to the enforcement of the criminal laws." Thus, such a part of a juvenile court is not made exempt from R.C. Chapter 1347 by R.C. 1347.04(A)(1)(d). See generally Op. No. 80-096.

R.C. 1347.04(A)(1)(e) exempts from R.C. Chapter 1347 not particular agencies or parts of agencies but, rather, particular types of personal information systems—namely, personal information systems that are "comprised of investigatory material compiled for law enforcement purposes by agencies that are not described" in R.C. 1347.04(A)(1)(a) or (d). Thus, R.C. 1347.04(A)(1)(e) applies to a personal information system comprised of investigatory material compiled by an agency or a part of an agency that does not perform, as its principal function, an activity relating to the enforcement of the criminal laws, provided that the material is compiled for law enforcement purposes. See generally Op. No. 80-096. Although I have concluded that a juvenile court does not perform, as its principal function, activity relating to the enforcement of the criminal laws, I think that it is clear that it may, in the exercise of its functions, compile materials "for law enforcement purposes." See, e.g., R.C. 2151.01(D) (R.C. Chapter 2151 is to be construed to provide judicial procedures in which the parties are assured of a fair hearing and their legal rights are recognized and enforced); R.C. 2151.14 (probation department); R.C. 2151.23 (jurisdiction of juvenile court). If a juvenile court has any personal information systems that are comprised of investigatory material compiled for law enforcement purposes, such systems are exempt from R.C. Chapter 1347. See generally Op. No. 80-096. I note, however, that the word "comprise," "in discriminating use, means to consist of and takes as its object the various parts that make up the whole." Webster's New World Dictionary 711 (2d college ed. 1978) (synonym of "include") ("his library comprises 2000 volumes and includes many first editions"). Thus, the fact that a personal information system includes a small amount of investigatory material compiled for law enforcement purposes would not operate to exempt the entire system from R.C. Chapter 1347. Rather, in such an instance, exemption of the investigatory material would appear to come within R.C. 1347.08 and R.C. 149.43, discussed below.

Information in a personal information system of a juvenile court which does not come within the exemptions of R.C. 1347.04 is subject to R.C. 1347.08 and, under that section, must be made available to the person who is the subject of the information, or his attorney, unless it comes within the exceptions of R.C. 1347.08(C), (E)(2), or (F), quoted above. R.C. 1347.08(C) provides a procedure for limited disclosure of information which is likely to have an adverse effect on the person to whom it relates; whether this provision applies depends upon the facts of a particular case. R.C. 1347.08(F) excepts from the provisions of R.C. 1347.08 adoption records, which are subject to inspection only upon consent of the court under R.C. 3107.17. The probate court has jurisdiction of adoption proceedings under that section, and such jurisdiction is separate from the jurisdiction exercised by a juvenile court, even if the juvenile court is within the probate division of the court of common pleas. See R.C. 2151.01(A)(1); R.C. 2151.07; R.C. 2151.23; R.C. 3107.01 ("[c]ourt," for purposes of adoption provisions, means probate court). Therefore, this exception is not applicable to the juvenile court. Of greatest interest in relation to your question is R.C. 1347.08(E)(2), which excludes from information which may be inspected a confidential law enforcement investigatory record or trial preparation record, as those terms are defined in R.C. 149.43(A)(2) and (4).

R.C. 149.43(A) provides, in relevant part:

(A) As used in this section:

....  
 (2) "Confidential law enforcement investigatory record" means any record that pertains to a law enforcement matter of a criminal, quasi-criminal, civil, or administrative nature, but only to the extent that the release of the record would create a high probability of disclosure of any of the following:

(a) The identity of a suspect who has not been charged with the offense to which the record pertains, or of an information source or witness to whom confidentiality has been reasonably promised;

(b) Information provided by an information source or witness to whom confidentiality has been reasonably promised, which information would reasonably tend to disclose his identity;

(c) Specific confidential investigatory techniques or procedures or specific investigatory work product;

(d) Information that would endanger the life or physical safety of law enforcement personnel, a crime victim, a witness, or a confidential information source.

...  
 (4) "Trial preparation record" means any record that contains information that is specifically compiled in reasonable anticipation of, or in defense of, a civil or criminal action or proceeding, including the independent thought processes and personal trial preparation of an attorney. (Emphasis added.)

Certain records of a juvenile court appear to come within these provisions. For example, R.C. 149.43(A)(2)(c) seems to encompass the specific investigatory work product generated by the probation department under R.C. 2151.14. R.C. 2151.14 provides for the establishment of a probation department under the direction of the juvenile judge<sup>3</sup> and states, in part:

The [probation] department shall make such investigations as the juvenile court directs, keep a written record of such investigation, and submit the same to the judge or deal with them as he directs. . . . The department shall keep full records of its work, keep accurate and complete accounts of money collected from persons under its supervision, give receipts therefor, and make reports thereon as the judge directs.

The reports and records of the department shall be considered confidential information and shall not be made public.

The fact that such records are made confidential and restricted from the public, see, e.g., In re Douglas, 11 Ohio Op. 2d 340, 164 N.E.2d 475 (Juv. Ct. Huron County 1959); cf. State v. Sherow, 101 Ohio App. 169, 138 N.E.2d 444 (Gallia County 1956) (confidentiality provision of R.C. 2151.14 applies only to the probation department and has no application to cases where the delinquents have been sentenced and committed to a state institution), is not determinative on the question whether the person to whom they relate may inspect them under R.C. 1347.08. See Op. No. 81-038. See also R.C. 2151.313 (limiting release of fingerprints and photographs made in the investigation of a crime). Records generated by the probation department as a result of its investigations appear, however, to fall within R.C. 1347.08(E)(2), and thus need not be disclosed under R.C. 1347.08 to the person to whom they relate.

In direct response to your question, then, I conclude that R.C. 1347.04 does not operate to exempt juvenile courts from the provisions of R.C. Chapter 1347 with respect to the courts' records of matters pertaining to juveniles; however, if a juvenile court has any personal information systems that are comprised of investigative material compiled for law enforcement purposes, such systems are exempt from R.C. Chapter 1347 under R.C. 1347.04(A)(1)(e). Apart from such systems, the mandatory disclosure requirements of R.C. 1347.08 apply to records of a juvenile court which pertain to a juvenile, and the juvenile court must permit the juvenile or a duly-authorized attorney representing the juvenile to inspect such records, unless the particular records are exempted under R.C. 1347.08(C) or (E)(2).

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<sup>3</sup> R.C. 2151.15 provides that, in certain instances, a county department of probation may exercise some or all of the powers and duties which would otherwise be exercised by a probation department established by a juvenile judge. Your question does not directly relate to such instances, and I am not addressing them herein. The general principles discussed in this opinion would, however, be applicable to such departments.

I note, however, that R. Juv. P. 37(B) states: "No public use shall be made by any person, including a party, of any juvenile court record, including the recording or a transcript thereof of any juvenile court hearing, except in the course of an appeal or as authorized by order of the court." Thus, while juvenile court records which are not exempt under R.C. 1347.04 or excluded under R.C. 1347.08(C) or (E)(2) are subject to inspection under R.C. 1347.08, they may not be put to any public use except in the course of an appeal or as authorized by order of the court.

Your request for my opinion relates specifically to the disclosure requirements of R.C. 1347.08, and I have limited this opinion to the obligations of a juvenile court to disclose court records pursuant to that section. I note, however, that there are other provisions that may affect the duties of a juvenile court to disclose information in various circumstances. In particular, R.C. 2151.18 states, in part:

The juvenile court shall maintain records of all official cases brought before it, including an appearance docket, a journal, and a cashbook. The court shall maintain a separate docket for traffic offenses. All traffic cases shall be recorded on the separate docket instead of on the general appearance docket. The parents of any child affected, if they are living, or the nearest of kin of the child, if the parents are deceased, may inspect these records, either in person or by counsel during the hours in which the court is open. (Emphasis added.)

Under this provision, even apart from R.C. 1347.08, the parents or nearest of kin of a child who is the subject of juvenile court records, or their counsel, may inspect juvenile court records of all official cases affecting that child. For a discussion of what constitutes an official case, see In re Douglas.

Further R. Juv. P. 32 relates to records of social history and physical or mental examinations. It states, in part:

(C) Availability of social history or investigation report. A reasonable time before the dispositional hearing, or any other hearing at which a social history or physical or mental examination is to be utilized, counsel shall be permitted to inspect any social history or report of a mental or physical examination. The court may, for good cause shown, deny such inspection or limit its scope to specified portions of the history or report. The court may order that the contents of the history or report, in whole or part, not be disclosed to specified persons. If inspection or disclosure is denied or limited, the court shall state its reasons for such denial or limitation to counsel.

(D) Investigation: custody; habeas corpus. On the filing of a complaint for custody or for a writ of habeas corpus to determine the custody of a child, or on the filing of a motion for change of custody, the court may cause an investigation to be made as to the character, health, family relations, past conduct, present living conditions, earning ability and financial worth of the parties to the action. The report of such investigation shall be confidential, but shall be made available to the parties or their counsel upon written request not less than three days before hearing. The court may tax as costs all or any part of the expenses of each investigation.

See R.C. 2151.352 (affected by R. Juv. P. 32). The social history and investigation reports covered by this rule appear to be confidential law enforcement investigatory records containing specific investigatory work product, see R.C. 149.43(A)(2)(c), and, thus, would not be subject to disclosure under R.C. 1347.08. R. Juv. P. 32 does, however, provide that, prior to a hearing, counsel will generally have access to reports to be used in the hearing. See R. Juv. P. 24 (discovery). It is, of course, clear that if any provision of the Juvenile Rules should conflict with a statutory provision, the provision of the rules would prevail. Ohio Const. art. IV, §5(B) (authorizing the Supreme Court of Ohio to prescribe rules governing practice and procedure in all courts of the state, which rules shall not abridge, enlarge, or



modify substantive rights, and stating that, "[a]ll laws in conflict with such rules shall be of no further force or effect after such rules have taken effect").

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

1. R.C. 1347.04 does not operate to exempt juvenile courts from the provisions of R.C. Chapter 1347 with respect to the courts' records of matters pertaining to juveniles; however, if a juvenile court has any personal information systems which are comprised of investigatory material compiled for law enforcement purposes, such systems are exempt from R.C. Chapter 1347 under R.C. 1347.04(A)(1)(e).
2. Under R.C. 1347.08, a juvenile court must permit a juvenile or a duly-authorized attorney who represents the juvenile to inspect court records pertaining to the juvenile unless the records are exempted under R.C. 1347.04(A)(1)(e) or R.C. 1347.08(C) or (E)(2). Under R. Juv. P. 37(B), the records may not, however, be put to any public use except in the course of an appeal or as authorized by order of the court.