

**OPINION NO. 82-104**

**Syllabus:**

Birth and death records kept by a probate court pursuant to R.C. 2101.12 are public records which must be made available to any member of the general public as required by R.C. 149.43, regardless of the motive which such member of the public has for inspecting such records. (1974 Op. Att'y Gen. No. 74-097, approved and followed in part.)

**To: Roger L. Kline, Pickaway County Prosecuting Attorney, Circleville, Ohio**  
**By: William J. Brown, Attorney General, December 20, 1982**

I have before me your request for an opinion on the question whether birth and death records of the probate court are public records. Your specific question is whether salesmen can get these records and use them to contact people and attempt to sell them various things.

R.C. 2101.12 requires that the probate court keep records of births and deaths. It states in relevant part:

The following books or records shall be kept by the probate court:

. . .

(J) A permanent record of all births and deaths occurring within the county, reported as provided by law, which record shall be kept in the form and manner that may be designated by the director of health. . . .

The statutory rule governing public records is set forth in R.C. 149.43, as follows:

(A) As used in this section:

(1) "Public record" means any record that is required to be kept by any governmental unit, including, but not limited to, state, county, city, village, township, and school district units, 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.

. . . .

(3) "Medical record" means any document or combination of documents, except births, deaths, and the fact of admission to or discharge from a hospital, that pertains to the medical history, diagnosis, prognosis, or medical condition of a patient and that is generated and maintained in the process of medical treatment.

. . . .

(B) All public records shall be promptly prepared and made available to any member of the general public 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. 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.

(C) Chapter 1347.<sup>1</sup> of the Revised Code does not limit the provisions of this section. (Emphasis and footnote added.)

R.C. 149.43(A)(1) defines the term "public record" to include all records that are required to be kept by any governmental unit, with certain specified exceptions. There is no question but that a probate court is a governmental unit, see generally 1974 Op. Att'y Gen. No. 74-097, and R.C. 2101.12(J) clearly requires that the probate court keep records of births and deaths. Thus, pursuant to R.C. 149.43(A)(1), the birth and death records of the probate court are public records unless they are medical records, records pertaining to adoption, probation, and parole proceedings, trial preparation records, confidential law investigatory records, or records the release of which is prohibited by state or federal law. I am aware of no state or federal law which would prohibit the release of birth and death records held by a probate court. The only other exception contained in R.C. 149.43(A)(1) which might be applicable to such records is the exception for medical records, and R.C. 149.43(A)(3) specifies that the medical records exception does not apply to records of births or deaths. Hence, records of births and deaths kept by the probate court pursuant to R.C. 2101.12 are public records for purposes of R.C. 149.43, and must be made available as provided therein.

Your request reflects some concern that salesmen might use the records of births and deaths to contact relatives of newborns or of the recently deceased and attempt to sell them things. I addressed a similar concern in Op. No. 74-097 when I was asked whether a judge had any discretionary powers to restrict inspection of court records if the purpose of such inspection was to use the records for commercial or professional sales solicitation or for a malicious reason. I concluded in Op. No. 74-097 at 2-392: "[T]he public's right under R.C. 149.43 to inspect public records may not be restricted as to the purpose of the inspection or the use to be made of the records."

The language of R.C. 149.43 has been amended since I wrote Op. No. 74-097, Am. Sub. S.B. 62, 113th Gen. A. (1979) (eff. Jan. 18, 1980), but the general analysis concerning the right of public access to public records has not changed. R.C. 149.43(B) states flatly that "[a]ll public records shall be promptly . . . made available to any member of the general public at all reasonable times for inspection," and provides for copies to be made upon request. This mandate applies to all items which are classified as "public records" under R.C. 149.43(A)(1). Birth and death records held by a probate court under R.C. 2101.12 clearly come within the definition of "public records" and, pursuant to R.C. 149.43, must be made available to "any member of the general public," regardless of such person's motive for inspecting the records. See generally 1973 Op. Att'y Gen. No. 73-034.

In conclusion, it is my opinion, and you are hereby advised, that birth and death records kept by a probate court pursuant to R.C. 2101.12 are public records which must be made available to any member of the general public as required by R.C. 149.43, regardless of the motive which such member of the public has for inspecting such records. (1974 Op. Att'y Gen. No. 74-097, approved and followed in part.)

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<sup>1</sup>I note that R.C. Chapter 1347, the Privacy Act, provides that certain records which are not available to the public at large must, upon request, be disclosed to the person who is the subject of the information. R.C. 1347.08. See generally 1980 Op. Att'y Gen. No. 80-096. The Privacy Act is not relevant in this instance, however, since your question involves making records available to individuals who have no relation to the subject of the records.