

(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;

(3) Inform the person about the types of uses made of the personal information, including the identity of any users usually granted access to the system.

....
 (C)(1) 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)(1) This section regulates access to personal information that is maintained in a personal information system by persons who are the subject of the information, but does not limit the authority of any person, including a person who is the subject of personal information maintained in a personal information system, to inspect or have copied, pursuant to section 149.43 of the Revised Code, a public record as defined in that section.

(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 defined in divisions (A)(2) and (4) of section 149.43 of the Revised Code.

(F) This section does not apply to papers, records, and books that pertain to an adoption and that are subject to inspection in accordance with section 3107.17 of the Revised Code, or to records listed in division (A) of section 3107.42 of the Revised Code. (Emphasis added.)

R.C. 1347.09 permits a person who "disputes the accuracy, relevance, timeliness, or completeness of personal information that pertains to him and that is maintained by any state or local agency in a personal information system" to seek to have the information corrected or, if the dispute is not resolved to his satisfaction, to include in the record a statement of his position with regard to the dispute. R.C. 1347.10 provides for the recovery of damages in a civil action for harm caused by a person who wrongfully maintains or discloses personal information or who intentionally denies the right to inspect and dispute personal information, and also provides for court orders or judgments to ensure compliance with R.C. Chapter 1347. See note 4, *infra*.

R.C. 1347.04 exempts certain public bodies and certain types of personal information systems from the provisions of R.C. Chapter 1347. R.C. 1347.04 states:

(A)(1) Except as provided in division (A)(2) of this section or division (C)(2) of section 1347.08¹ of the Revised Code, *the*

¹ R.C. 1347.08(C)(2) provides for the disclosure of medical information relating to an inmate of a penal or reformatory institution under the administration of the Department of Rehabilitation and Correction to an attorney or physician designated by the inmate, as provided in R.C. 5120.21(C).

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 (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.

(B) The provisions of this chapter shall not be construed to prohibit the release of public records, or the disclosure of personal information in public records, as defined in section 149.43 of the Revised Code, or to authorize a public body to hold an executive session for the discussion of personal information if the executive session is not authorized under division (G) of section 121.22 of the Revised Code.

The disclosure to members of the general public of personal information contained in a public record, as defined in section 149.43 of the Revised Code, is not an improper use of personal information under this chapter. (Emphasis and footnote added.)

Your specific question is whether child abuse and neglect investigatory records maintained by public children services agencies are included within the exemption set forth in R.C. 1347.04(A)(1)(e). If they are not exempted by R.C. 1347.04, then they are subject to the provisions of Ohio personal information systems law and must be made available for inspection by the subjects of the records as provided in R.C. 1347.08, subject to the exceptions set forth in R.C. 1347.08.

The term "public children services agencies" encompasses children services boards and county departments of human services that exercise the children services function prescribed in R.C. Chapter 5153. See R.C. 2151.011(A)(26); R.C. 5153.01-.07. Pursuant to R.C. 2151.421, public children services agencies are given responsibilities with respect to the investigation of reports of known or suspected child abuse or neglect or threats of such abuse or neglect. R.C. 2151.421 requires, with specified exceptions, that persons holding certain professions or positions report knowledge or suspicion of child abuse or neglect or threatened child abuse or neglect to a public children services agency or a municipal or county peace officer, and permits all other persons to report such knowledge or suspicion. See R.C. 2151.421(A), (B). With respect to such reports and the duties of the public children services agencies, R.C. 2151.421 states:

(C) Any report made pursuant to division (A) or (B) of this section shall be made forthwith by telephone or in person forthwith, and shall be followed by a written report, if requested by the receiving agency or officer. The written report shall contain:

(1) The names and addresses of the child and his parents or the person or persons having custody of the child, if known;

(2) The child's age and the nature and extent of the child's known or suspected injuries, abuse, or neglect or of the known or suspected threat of injury, abuse, or neglect, including any evidence of previous injuries, abuse, or neglect;

(3) Any other information that might be helpful in *establishing the cause of the known or suspected injury, abuse, or neglect or of the known or suspected threat of injury, abuse, or neglect.*

....

(D) *Upon the receipt of a report concerning the possible abuse or neglect of a child or the possible threat of abuse or neglect of a*

child, the municipal or county peace officer who receives the report shall refer the report to the appropriate county department of human services or children services board.

(E) No child about whom a report is made pursuant to this section shall be removed from his parents, his stepparents, his guardian, or any other persons having custody of the child by a municipal or county peace officer without consultation with the children services board or the county department of human services exercising the children services function, unless, in the judgment of the reporting physician and the officer, immediate removal is considered essential to protect the child from further abuse or neglect.

(F) *The county department of human services or children services board shall investigate, within twenty-four hours, each report of known or suspected child abuse or child neglect and of a known or suspected threat of child abuse or child neglect that is referred to it under this section to determine the circumstances surrounding the injuries, abuse, or neglect or the threat of injury, abuse, or neglect, the cause of the injuries, abuse, neglect, or threat, and the person or persons responsible. The investigation shall be made in cooperation with the law enforcement agency. The county department of human services or children services board shall report each case to a central registry which the state department of human services shall maintain in order to determine whether prior reports have been made in other counties concerning the child or other principals in the case. The department or board shall submit a report of its investigation, in writing to the law enforcement agency.*

The county department of human services or children services board shall make any recommendations to the county prosecutor or city director of law that it considers necessary to protect any children that are brought to its attention.

....

(H)(1) Any report made under this section is confidential.

(2) No person shall permit or encourage the unauthorized dissemination of the contents of any report made under this section.

(I) Any report that is required by this section shall result in protective services and emergency supportive services being made available by the county department of human services or children services board on behalf of the children about whom the report is made, in an effort to prevent further neglect or abuse, to enhance their welfare, and, whenever possible, to preserve the family unit intact....

(J) *There shall be placed on file with the juvenile court in each county and the department of human services an initial plan of cooperation jointly prepared and subscribed to by a committee consisting of the county peace officer, all chief municipal peace officers within the county, the prosecuting attorney of the county and the director of law of each city, and the children services board or county department of human services exercising the children services function as convened by the county director of human services. The plan shall set forth the normal operating procedure to be employed by all concerned officials in the execution of their respective responsibilities under this section and division (B) of section 2919.21 ["[n]o person shall aid, abet, induce, cause, encourage, or contribute to a child...becoming a dependent child...or a neglected child..."], division (B)(1) of section 2919.22 ["[n]o person shall...[a]buse [a] child"], division (B) of section 2919.23 ["[n]o person shall aid, abet, induce, cause, or encourage a child...who has been committed to the custody of any person...to leave the custody...without legal consent"], and section 2919.24 ["[n]o person shall...[a]id, abet, induce, cause, encourage, or contribute to a child...becoming an unruly child...or a delinquent child..."] of the Revised Code. The plan shall include a system for cross-referral of reported cases of abuse and neglect as necessary, and also shall include the name and title of the official directly responsible for making reports to the central registry. (Emphasis added.)*

The provisions of R.C. Chapter 1347 apply, in general, to state and local agencies as defined in R.C. 1347.01. R.C. 1347.01(B) defines the term "local agency" to mean "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." It appears that a public children services agency is a "board, bureau, commission, department, division, institution, or instrumentality of a county" for purposes of R.C. Chapter 1347. A county department of human services is clearly a county department. *See, e.g.,* R.C. 329.01-.02; R.C. 5153.07. A children services board serves the same functions with respect to child welfare as a county department of human services. *See, e.g.,* R.C. 2151.011(A)(26). It functions on a county level and thus appears to constitute a county board. *See, e.g.,* R.C. 5153.02-.07. The General Assembly has recognized both county departments of human services and children services boards as agencies of county government. *See* R.C. 5153.15 ("[t]he powers and duties enumerated in [R.C. 5153.16-.19], with respect to the care of children, needing or likely to need public care or services, shall be vested in a single agency of county government, namely, a county department of human services or a county children services board"). It follows that public children services agencies are "local agencies" for purposes of R.C. Chapter 1347 and that persons' information systems maintained by such agencies are subject to the provisions of R.C. Chapter 1347 except to the extent that they come within the exceptions set forth in that chapter.

R.C. 1347.04, quoted above, establishes various exemptions from the provisions of R.C. Chapter 1347. As your letter of request indicates, the only exemption that may be applicable to public children services agencies is that set forth in R.C. 1347.04(A)(1)(e). Such agencies are not criminal courts, prosecutors, or correction, probation, pardon, or parole authorities, so as to come within R.C. 1347.04(A)(1)(b), (c), (d). They do not perform as their principal function activity relating to the enforcement of the criminal laws, so as to come within R.C. 1347.04(A)(1)(a). *See* R.C. 5153.16 (setting forth duties of public children services agencies, including accepting custody of and providing care for children); 1987 Op. Att'y Gen. No. 87-010 at 2-57 (raising the question whether working for the enforcement of juvenile laws is the same as working for the enforcement of criminal laws for purposes of R.C. Chapter 1347, because the juvenile court system is classified as a non-criminal system). It does, however, appear that public children services agencies may have personal information systems "that are comprised of investigatory material compiled for law enforcement purposes" by such agencies and thus come within R.C. 1347.04(A)(1)(e).² Your question is whether child abuse and neglect investigatory records maintained by public children services agencies come within this exemption.

It should be noted, first, that a determination as to whether particular records held by a state or local agency constitute a personal information system requires findings of fact. *See, e.g.,* 1984 Op. Att'y Gen. No. 84-077. The definition of "personal information" that is set forth in R.C. 1347.01(E) and quoted above includes information that describes anything about a person, indicates actions done by or to a person, or indicates that a person possesses certain physical characteristics, but only when the information "contains, and can be retrieved from a system by, a name, identifying number, symbol, or other identifier assigned to a person." You have indicated that your question pertains to child abuse and neglect investigatory records maintained by public children services agencies. Such records clearly may include information that describes persons or their actions or physical characteristics. You have not, however, indicated precisely how those records are organized or what system of retrieval is provided. Further, since public children services agencies exist in all counties throughout the state, it may be expected that some variations in recordkeeping exist. It is, therefore, not clear to what extent such records will contain names, identifying numbers, symbols, or other identifiers assigned to particular persons that can be used to retrieve information. I am not

² It should be noted that the exemption set forth in R.C. 1347.04(A)(1)(e) applies to particular records, rather than to an agency or a part of an agency. In this respect, it differs from the other exemptions set forth in R.C. 1347.04. *See, e.g.,* 1984 Op. Att'y Gen. No. 84-077 at 2-255; 1980 Op. Att'y Gen. No. 80-096 at 2-377 to 2-378.

attempting to determine whether any particular records constitute a personal information system for purposes of R.C. Chapter 1347. I note, however, that both the right of access granted by R.C. 1347.08 and the exemption established by R.C. 1347.04(A)(1)(e) apply only to personal information systems. Therefore, to the extent that the records in question do not constitute a personal information system, they are not subject to the provisions of R.C. Chapter 1347. *See, e.g., United States v. Collins*, 596 F.2d 166 (6th Cir. 1979); Op. No. 84-077.

Assuming that the particular records in question do constitute a personal information system, I turn to the question whether that system is "comprised of investigatory material compiled for law enforcement purposes," so that it is exempt from R.C. Chapter 1347 pursuant to R.C. 1347.04(A)(1)(e). *See generally* Op. No. 84-077 at 2-255. As noted above, a public children services agency does not perform as its principal function an activity relating to the enforcement of the criminal laws. A public children services agency has a variety of functions relating to the welfare of children. *See, e.g.,* R.C. 5153.16-.35. Many of the duties relate directly to the provision of care, protection, and shelter for children. *See, e.g.,* R.C. 5153.16(C), (D), (G), (H), (J). Others involve cooperation and agreements with various governmental bodies and other organizations in matters relating to child welfare. *See, e.g.,* R.C. 5153.16(F), (K), (L). It would, therefore, be inappropriate to classify a public children services agency as an entity that performs principally criminal law enforcement functions, so as to render it exempt from R.C. Chapter 1347 pursuant to R.C. 1347.04(A)(1)(a).

It is, however, clear that certain functions of a public children services agency — and particularly investigatory functions performed under R.C. 2151.421 — do involve law enforcement activities. R.C. 2151.421 provides for reports of known or suspected child abuse or neglect or threats of child abuse or neglect to be made either to a public children services agency or to a municipal or county peace officer, and provides that a municipal or county peace officer who receives such a report shall refer it to the appropriate public children services agency. R.C. 2151.421(A), (B), (D). The receiving agency or officer may request a written report and such a report shall include "information that might be helpful in establishing the cause of the known or suspected injury, abuse, or neglect or of the known or suspected threat of injury, abuse, or neglect." R.C. 2151.421(C)(3). The public children services agency is required to investigate the report "to determine the circumstances surrounding the injuries, abuse, or neglect or the threat of injury, abuse, or neglect, the cause of the injuries, abuse, neglect, or threat, and the person or persons responsible." R.C. 2151.421(F). The investigation is to be made "in cooperation with the law enforcement agency," and the public children services agency is required to submit a written report of its investigation to the law enforcement agency. R.C. 2151.421(F). The investigation is performed pursuant to a plan of cooperation prepared and subscribed to by local law enforcement agencies, attorneys with prosecutorial responsibilities, and the public children services agency. R.C. 2151.421(J). The plan of cooperation sets forth the normal operating procedure to be employed in the enforcement of criminal provisions defining offenses involving child abuse and neglect. *See* R.C. 2919.21(B); R.C. 2919.22(B)(1); R.C. 2919.23(B); R.C. 2919.24. It is clear that the purpose of an investigation by a public children services agency is to establish the cause of the injury, abuse, or neglect of the child or of the threat of injury, abuse, or neglect of the child and the person or persons responsible. The public children services agency is cooperating with law enforcement agencies in performing such investigations and is reporting its results to them. Information gathered by such means and for such purposes thus appears to constitute "investigatory material compiled for law enforcement purposes" as those words are used in R.C. 1347.04(A)(1)(e).

It might be argued that child abuse and neglect investigatory records maintained by public children services agencies pursuant to R.C. 2151.421 are not "compiled for law enforcement purposes" because the agency uses the information to provide protective and emergency supportive services for the child, rather than to bring an enforcement action. *See* R.C. 2151.421(I). Indeed, many of the functions of a public children services agency involve the provision of services to children who are in need. *See, e.g.,* R.C. 5153.16(D), (G). It is, however, evident from the language of R.C. 2151.421 that an investigation carried out pursuant to the provisions of that section is performed for the purpose of identifying the cause of the injuries, abuse, neglect, or threat and the person or persons responsible. The

information so gathered is required to be reported to a law enforcement agency, see R.C. 2151.421(F), and is clearly intended to be used for law enforcement purposes, even though the public children services agency itself may not be the entity responsible for bringing enforcement actions. See R.C. 2151.421(F) (the county public children services agency "shall make any recommendations to the county prosecutor or city director of law that it considers necessary to protect any children that are brought to its attention"). See generally *Haag v. Cuyahoga County*, 619 F.Supp. 262, 270 (N.D. Ohio 1985), *aff'd*, 798 F.2d 1414 (6th Cir. 1986) ("[t]he purpose of [R.C. 2151.421] is to protect children from abuse and/or neglect and to eliminate the source of any such abuse"). It appears, therefore, that the investigatory functions mandated by R.C. 2151.421 are part of a comprehensive scheme for enforcement of the provisions that prohibit the abuse and neglect of children. See R.C. 2151.421(J). I conclude, accordingly, that child abuse and neglect investigatory records maintained by public children services agencies constitute "investigatory material compiled for law enforcement purposes" within the meaning of R.C. 1347.04(A)(1)(e). Personal information systems that are comprised of such records are, pursuant to R.C. 1347.04(A)(1)(e), exempt from the disclosure provisions of R.C. Chapter 1347. See generally Op. No. 84-077.

I note that R.C. 2151.421(H) states that "[a]ny report made under this section is confidential." Further, R.C. 5153.17 provides generally for the confidentiality of the records of a public children services agency, as follows:

The county children services board or county department of human services shall prepare and keep written records of investigations of families, children, and foster homes, and of the care, training, and treatment afforded children, and shall prepare and keep such other records as are required by the department of human services. Such records shall be confidential, but shall be open to inspection by the board or department of human services, the director of the county department of human services, and by other persons, upon the written permission of the executive secretary.

See also 8 Ohio Admin. Code 5101:2-34-38 (providing that each report and investigation of alleged child abuse or neglect is confidential and may be shared only as authorized therein). Because I have concluded that the records in question, where they are maintained in a personal information system, are exempt from the provisions of R.C. Chapter 1347, it is unnecessary to consider what effect their confidentiality would have upon their accessibility under R.C. Chapter 1347 if they were not exempt.³ It has, however, been concluded generally that the fact that certain records are made confidential and restricted from the public "is not determinative on the question whether the person to whom they relate may inspect them under R.C. 1347.08." Op. No. 84-077 at 2-256; see R.C. 1347.04; R.C. 1347.08(E), (F); 1981 Op. Att'y Gen. No. 81-038 at 2-152 ("[t]here is no provision in R.C. Chapter 1347...which prohibits access to information otherwise made confidential under state or federal law").

It should be noted, further, that the fact that certain records may not be accessible under R.C. Chapter 1347 does not prevent their discovery and use, as may be appropriate, in a judicial proceeding. See *Henneman v. City of Toledo*, 35 Ohio St. 3d 241, 245-46, 520 N.E.2d 207, 211-12 (1988) (stating that R.C. Chapter 1347 was not intended to shield personal information from a legitimate discovery request

³ You have not asked and I am not considering whether the records in question are available to the general public as public records under R.C. 149.43. I note, however, that R.C. 149.43 contains several exceptions to the category of public records, among them "trial preparation records, confidential law enforcement investigatory records, and records the release of which is prohibited by state or federal law." R.C. 149.43(A)(1). R.C. 1347.08(E)(2) states expressly that R.C. 1347.08 does not provide a right to inspect items that are confidential law enforcement investigatory records or trial preparation records under R.C. 149.43. See generally 1981 Op. Att'y Gen. No. 81-014.

when the information is otherwise discoverable, and finding that certain confidential information is subject to discovery in civil litigation "if, upon an *in camera* inspection, the trial court determines that the requesting party's need for the material outweighs the public interest in the confidentiality of such information"; *Davis v. Trumbull County Children Services Board (In re Barzak)*, 24 Ohio App. 3d 180, 493 N.E.2d 1011 (Trumbull County 1985) (upholding as error complete denial of access by the parents' attorney to children services' files when those files were sought as relevant for preparation and prosecution of the defense); *In re Trumbull County Children Services Board*, 32 Ohio Misc. 2d 11, 513 N.E.2d 360 (C.P. Trumbull County 1986) (adopting the ruling of *Davis v. Trumbull County Children Services Board* and stating that "any unresolved conflict upon such request [for inspection of records of a county children services board] should be determined by a court of competent jurisdiction, as suggested in R.C. 1347.10(B)".⁴ See generally *Pennsylvania v. Ritchie*, 480 U.S. 39, 59-60 (1987) ("[a] defendant's right to discover exculpatory evidence does not include the unsupervised authority to search through the [government's] files....We find that [the defendant's] interest...in ensuring a fair trial can be protected fully by requiring that the [Children and Youth Services] files be submitted only to the trial court for *in camera* review"). See also R. Civ. Proc. 26, 34, 37; R. Crim. Proc. 16; R. Juv. Proc. 24.

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

1. Public children services agencies are local agencies for purposes of R.C. Chapter 1347, which governs the maintenance of personal information systems.
2. Records that do not constitute "personal information systems" as that term is used in R.C. Chapter 1347 are not subject to the disclosure provisions of R.C. Chapter 1347.
3. Child abuse and neglect investigatory records maintained by public children services agencies constitute "investigatory material compiled for law enforcement purposes" within the meaning of R.C. 1347.04(A)(1)(e). Personal information systems that are comprised of such records are, pursuant to R.C. 1347.04(A)(1)(e), exempt from the provisions of R.C. Chapter 1347.
4. The fact that certain records may not be accessible under R.C. Chapter 1347 does not prevent their discovery and use, as may be appropriate, in a judicial proceeding.

⁴ R.C. 1347.10(B) provides for injunctive proceedings to enforce the provisions of R.C. Chapter 1347, as follows:

Any person who, or any state or local agency that, violates or proposes to violate any provision of this chapter may be enjoined by any court of competent jurisdiction. The court may issue an order or enter a judgment that is necessary to ensure compliance with the applicable provisions of this chapter or to prevent the use of any practice that violates this chapter. An action for an injunction may be prosecuted by the person who is the subject of the violation, by the attorney general, or by any prosecuting attorney.