



Clearance #5206

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To Clearance Reviewers:

The following is an update to the ODJFS Office of Legal services publication entitled "Public Records and Confidentiality Laws." This publication is updated annually and is published in the ODJFS Internet and InnerWeb. Your review and comments are appreciated.



Public Records and Confidentiality Laws

**Ohio Department of Job and Family Services
Office of Legal Services**

January 2004

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I. THE OHIO PUBLIC RECORDS ACT

When responding to a request for records, an analysis of whether the requested records may be released, must be released or cannot be released begins with an analysis of pertinent law contained in RC Chapter 149. RC §149.011(G) sets out the definition of “records” subject to public records laws. This definition includes:

"any document, device, or item, regardless of physical form or characteristic, created or received 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."

RC 149.43 is known as the “Public Records Act” and is the general records law governing the status of state and local government records when requested by a third party. The statute previously contained language applying its guidelines only to records required to be kept by any public office. The required to be kept language was removed from the statute by the legislature which means that this statute applies to virtually any record kept by any state or local governmental agency, in any form (but it must be a “record” under the definition contained in Section 149.011(G) of the Revised Code).

RC §149.43(B) mandates that all public records held by state or local government entities be maintained “.. in a manner that they can be made available for inspection in accordance with..” the statute. Therefore, when new computer systems or storage strategies are formulated for information management purposes, access for purposes of public records laws must be considered.

RC §149.43(B) requires that all **public** records “...be promptly prepared and made available for inspection to any person at all reasonable times during regular business hours.” The statute gives the state or local agency a reasonable period of time to produce the requested public records. This does not mean at the state or local agency’s convenience. A “reasonable period of time” includes the time it takes to locate the record, determine if the requested record is a **public** record and secure it from where it is stored. If the record is at hand and is clearly a **public** record, it must be released immediately. The courts have ruled in most cases that the requestor of records need not identify themselves, put their request in writing or provide a reason for requesting the information. The courts make it very clear that refusing to release records for any of the aforementioned reasons, is improper despite any type of state or local agency internal policy. However, if the request for public records is by a person who is incarcerated due to a criminal conviction or juvenile adjudication and who is the subject of the records and the requested access is for public records concerning a criminal investigation or prosecution or concerning what would be a criminal investigation or prosecution, access is restricted to circumstances wherein a judge determines that the records sought are necessary to support what appears to be a justiciable claim of the person.

Any state or local agency that receives the public records request is required to give the person requesting the public record the option of receiving a copy of the public record requested “..upon paper, upon the same medium upon which the public office or person responsible for the public record keeps it, or upon any other medium upon which the public office or person responsible for the public record determines that it reasonably can be duplicated as an integral part of the normal operations of the public office or person responsible for the public record.”

State and local agencies, upon request, must mail public records to requestors, although the state or local agency can limit the number of records mailed to ten per month if the requestor is requesting the records for commercial purposes (commercial purposes do not include reporting or gathering news, reporting or gathering information to assist citizen oversight or understanding of the operation or activities for government, or nonprofit educational research).

Upon receiving a request for records and in deciding whether to release a record, the person receiving the request must first determine whether the record being requested is a public record. RC §149.43(A)(1) defines a public record as:

...any record that is kept by any public office, including but not limited to, state, county, city, village, township, and school district units, and records pertaining to the delivery of educational services by an alternative school in Ohio kept by a nonprofit or for profit entity operating such alternative school pursuant to section 3313.533 of the Revised Code. "Public Record" does not mean any of the following.

The statute then sets out twenty-two specific exceptions and one general exception. Thus, virtually **all records held by any public office are "public records" which must be released to anyone upon request unless the record fits within one of the exceptions set out in the statute.** The exceptions are as follows:

- 1. Medical Records** - any document or combination of documents, except births, deaths, and the fact of admissions 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.**
- 2. Records Pertaining to Probation and Parole Proceedings or to proceedings related to the imposition of community control sanctions (as defined under RC §2929.01 and post release control sanctions (as defined under RC §2967.01)**
- 3. Juvenile Abortion Permission Records** - (Section 2151.85 of the Revised Code and Division (C) of RC §2919.121 and to appeals arising under those sections).
- 4. Records Pertaining to Adoption Proceedings, Including the Contents of an Adoption file Maintained by the Department of Health under RC § 3705.12.**
- 5. Information in a Record Contained in the Putative Father Registry** - established by RC §3107.062, regardless of whether the information is held by the Department of Job and Family Services or, pursuant to RC § 3111.69, the division of child support in the department or a Child Support Enforcement Agency.
- 6. Adoption Records** - RC §3107.42(A) and RC §3107.52.
- 7. Trial Preparation Records** - 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.

8. **Confidential Law Enforcement Investigatory Records** - 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 the identity of a suspect who has not been charged with the offense to which the record pertains; an information source or witness to whom confidentiality has been reasonably promised; information which would tend to disclose the identity of a source or witness if confidentiality was reasonably promised; specific confidential investigatory techniques or procedures or specific investigatory work product; and information that would endanger the life or physical safety of law enforcement personnel, a crime victim, a witness, or a confidential information source.
9. **Certain Records Related to Ohio Civil Rights Commission Investigations which are Deemed to be Confidential Pursuant to RC §4112.05 or §2317.023.**
10. **DNA Records Stored in the DNA Database Pursuant to RC §109.573.**
11. **Inmate Records** - released by the Department of Rehabilitation and Correction to the Department of Youth Services or a court of record pursuant to division (E) of RC § 5120.21.
12. **Department of Youth Services Records** - pertaining to children in its custody released by the Department of Youth Services to the Department of Rehabilitation and correction pursuant to division (E) of RC § 5120.21.
13. **Intellectual Property Records** - a record, other than a financial or administrative record, that is produced or collected by or for faculty or staff of a state institution of higher learning in the conduct of or as a result of study or research on an educational, commercial, scientific, artistic, technical, or scholarly issue, regardless of whether the study or research was sponsored by the institution alone or in conjunction with a governmental body or private concern, and that has not been publicly released, published or patented.
14. **Donor Profile Records** - all records about donors or potential donors to a public institution of higher education except the names and reported addresses of the actual donors and the date, amount, and conditions of the actual donation.
15. **Records Maintained by the Department of Job and Family Services Pursuant to RC § 3121.89** - new hire and rehire reporting for child support by employers.
16. **Peace Officer, Firefighter, or EMT Residential and Familial Information (PFE)** - Peace officer has the same meaning as in RC §109.71 and also includes the superintendent and the troopers of the highway patrol. Peace officer for the purpose of this exception excludes county sheriffs or supervisory employees who take over for county sheriff in his/her absence. A "firefighter" means any regular, paid or volunteer, member of a lawfully constituted fire department of a municipal corporation, township, fire district, or village. "EMT" means EMTs-basic, EMTs-I, and paramedics that provide emergency medical services for a public emergency medical service organization. "Emergency medical service organization," "EMT-basic," "EMT-I" and "paramedic" have the same meanings as in RC § 4765.01.

Information contained in records containing the following are not considered public records: (i) the address of the actual personal residence of a PFE except for the state or political subdivision in which the peace officer resides; (ii) information compiled from referral or participation in an employee assistance program; (iii) the social security number, the residential telephone number, any bank account, debit card, charge card, or credit card number, or the emergency telephone number of, or any medical information pertaining to a PFE; (iv) the name of any beneficiary of employment benefits, including, but not limited to, life insurance benefits, provided to a PFE by the PFE's employer; (v) the identity and amount of any charitable or employment benefit deduction made by the PFE's employer from the PFE's compensation unless the amount of the deduction is required by state or federal law; (vi) the name, residential address, the name of the employer, the social security number, the residential telephone number, any bank account, debit card charge care, or credit card number, or the emergency telephone number of the spouse, a former spouse or any child of a PFE, (vii) any record that identifies a person's occupation as a PFE other than statements required to include the disclosure of that fact under the campaign finance law.

However, this exception does not apply to journalists (defined as a person engaged in, connected with, or employed by any news medium, including a newspaper, magazine, press association, news agency, or wire service, a radio or television station, or a similar medium, for the purpose of gathering, processing, transmitting, compiling, editing, or disseminating information to the general public) who may access a PFE's personal residence address or the employer address of the PFE's spouse, former spouse or child if any of them are employed by a public office. The request from the journalist shall be in writing, contain the journalist and his/her employer's name and state that release of the information is in the public interest.

17. **In the Case of a County Hospital Operated Pursuant to RC Chapter 339, Information that Constitutes a Trade Secret, as Defined in RC §1333.61.**
18. **Information pertaining to the recreational activities of a person under the age of eighteen.** This means information that is kept in the ordinary course of business by a public office, that pertains to the recreational activities of a person under the age of eighteen years, and that discloses: the address or telephone number of a person under the age of eighteen or the address or telephone number of that person's parent, guardian, custodian, or emergency contact person; the social security number, birth date, or photographic image of a person under the age of eighteen; any medical record, history, or information pertaining to a person under the age of eighteen; any additional information sought or required about a person under the age of eighteen for the purpose of allowing that person to participate in any recreational activity conducted or sponsored by a public office or to use or obtain admission privileges to any recreational facility owned or operated by a public office.
19. **Records provided to, statements made by review board members during meetings of, and all work products of a child fatality review board acting under RC §307.621 to RC §307.629 other than the report prepared pursuant to RC §307.626.**
20. **Records provided to and statements made by the executive director of a public children services agency or a prosecuting attorney acting pursuant To**

RC § 5153.171 other than the information released under that section.

- 21. Test materials, examination, or evaluation tools used in an examination for licensure as a nursing home administrator that the board of examiners of nursing home administrators under RC § 4751.04 or contracts under that section with a private or government entity to administer.**
- 22. Records the Release of Which is Prohibited by State or Federal Law - see Parts III, IV, and V of this memorandum.**
- 23. Proprietary information of or relating to any person that is submitted or compiled by the Ohio venture capital authority created under RC §150.01.**

A record falling within one of these exceptions is not **required** to be released but **may** be released at the discretion of the state or local governmental agency that holds the records **unless** release would violate guidelines or restrictions set out in federal or state statutes, regulations or rules. If a record contains some information that falls within an exception, the state or local governmental agency may or must (depending upon the exception) edit (redact) the excepted information and release the public record portion.

Paragraph B of RC §149.43 allows agencies that provide public records to third parties pursuant to the statute to charge “cost” to the requestor. The term “cost” is not defined in the statute. The courts have found that \$.25 per paper copy or less is acceptable. However, it is ODJFS policy to charge \$.05 per paper copy. Other acceptable costs include but are not limited to actual mailing costs for copies, actual cost of computer discs, or actual costs for computer time. **The courts do not allow costs to include the hourly wages of employees who secure or copy the information pursuant to the request.** If the request reasonably requires the use of a contractor, that cost can be charged to the requestor. This type of cost should be agreed upon between the parties before charged. The courts allow delay in providing requested records if the agency requires payment prior to release. ODJFS may allow waiver of costs for release of records. Whether to waive costs should be decided on a case-by-case basis by the area providing the records.

Failure to release public records by an agency subject to RC §149.43 could result in a mandamus action being filed by the requestor. Mandamus is a special legal writ which can be filed in state common pleas, appellate or the supreme court. The writ asks the court to order the agency to do something that the agency is required to do by law. If a requestor prevails in the mandamus action requiring the agency to release the records at issue the court may also require the agency to pay attorney fees related to the mandamus action. This could result in thousands of dollars in costs borne by the agency. A mandamus action also requires large investments of time and representation for the agency by its own legal counsel. **It is, therefore, important to consult with the ODJFS Office of Legal Services whenever there is doubt as to whether a record is a public record or falls within one of the exceptions.** County agency employees should consult with their county prosecuting attorney regarding legal decisions on public records or confidentiality.

II. OHIO'S PERSONAL INFORMATION SYSTEMS ACT

RC Chapter 1347 "The Ohio Personal Information Systems Act", also known as the "The Ohio Privacy Act." This chapter regulates the use of personal information maintained by state and local governments as well as establishing an **additional right of access** to personal information (RC §1347.08) by the person who is the subject of the information, the subject's guardian or an attorney with written authorization from the subject. Therefore, this chapter must be analyzed when a record is sought by a person who is the subject of the information, the subject's guardian or an attorney with written authorization from the subject but the document is not a "public record" pursuant to RC §149.43 of the Revised Code. **OAC rule 5101-22-15** is the ODJFS rule related to RC Chapter 1347.

Personal information systems subject to RC Chapter 1347 are any collection or group of related records kept in an organized manner manually or electronically stored which contain information describing anything about a person or concerning acts of a person or that indicate that a person possesses certain personal characteristics. This information must have the capacity to be retrieved from the system by a name, identifying number, symbol or other identifier assigned to a person. The state or local agency must have ownership, control over, responsibility for, accountability for, or be required by law to keep the information (see RC §1347.01).

RC §1347.04 sets out exemptions to the provisions of RC Chapter 1347. They include:

1. Any state or local agency, or part of a state or local agency, that performs as its principal function any activity relating to enforcement of criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend criminals;
2. Criminal courts;
3. Prosecutors;
4. Any state or local agencies or part thereof that is a correction, probation, pardon, or parole authority; and
5. Personal information systems that are comprised of investigatory material compiled for law enforcement purposes not described in exemption 1 or 4. 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.

Section 1347.04 of the Revised Code also makes it clear at section (B) that RC Chapter 1347 cannot be construed to prohibit the release of public records required to be released by RC §149.43 nor will proper release of public records pursuant to RC §149.43 be considered an improper use of personal information under RC Chapter 1347.

Most county departments of job and family services, public children services agencies, county child support enforcement agencies, workforce development agencies, and one-stops retain client information which is not public record pursuant to RC §149.43 (due to state and federal laws) and are part of personal information systems pursuant to RC Chapter 1347, but do not fall within any of the exemptions contained in RC §1347.04. RC §1347.08 gives rights to inspection of this information to the person who is the subject of the personal information system, his/her guardian, or an attorney with written permission from the subject. Any person who wishes to exercise a right

provided by this section may be accompanied by another individual of his choice. RC §1347.08(D) allows each state and local agency to establish reasonable fees for the service of copying records pursuant to the statute. Limitations on this right to inspection include:

1. **Medical, Psychiatric or Psychological Information** - A physician, psychiatrist or psychologist may determine for the agency that disclosure of the information is likely to have an adverse affect on the person who is the subject of the information. If this is the case, the information must be released to a physician, psychiatrist or psychologist designated by the subject of the information in question (see RC §1347.08(C)(1)).

Upon the signed written request of either a licensed attorney at law or a licensed physician designated by the inmate, together with the signed written request of an inmate of a correctional institution under the administration of the department of rehabilitation and correction, the department shall disclose medical information to the designated attorney or physician as provided in division (C) of RC §5120.21.

2. **Confidential Law Enforcement Investigation Records** - The same definition as contained in RC §149.43. (See Part I of this memorandum.)
3. **Trial Preparation Records** - The same records as covered under RC §149.43. (See Part I of this memorandum)
4. **Contents of Certain Adoption Files Maintained by the Ohio Department of Health** - This exemption refers to contents of adoption files maintained by the department of health pursuant to RC §3705.12.
5. **Information contained in the Putative Father Registry** - This exemption includes any information held in the registry (see RC §3107.062) by the department of Job and Family Services or any county child support enforcement agency.
6. **Other Adoption Records** - Adoption records covered by RC §3107.17, §3107.42(A) and §3107.52.
7. **Records of Certain Investigations by the Ohio Department of Health** - regarding complaints of residents homes and expungement of unsubstantiated allegations pursuant to RC §3721.031(A)(1).
8. **Records of Investigations by the Ohio Department of Health** - regarding reports or expunged reports of abuse and/or neglect of Long Term Care Facility residents (see RC §3721.23(D)(1) and §3721.25(A)(1)).
9. **Identities and Records Containing Information which would Identify Persons Covered in RC § 5111.61(A)(1).** - Nursing facility residents, complainants regarding nursing facilities, individuals who provide information related to nursing facility complaints.
10. **Test materials, examination, or evaluation tools used in an examination OBR licensure as a nursing home administrator that the board of examiners of nursing home administrators under RC §4751.04 or contracts under that section with a private or government entity to administer.**

Each state and local agency may establish reasonable fees for the service of copying, upon request, personal information that is maintained by the agency and required to be provided under the statute.

In reviewing RC §149.43 and RC Chapter 1347, with respect to accessibility of records by members of the public, Ohio law recognizes four distinct classes of records:

1. Records pertaining to confidential law enforcement investigations and trial preparation are not subject to release under RC §149.43 or RC §1347.08 but may be released at the discretion of the agency that has the records. However, release of the records through this discretion, in some cases, may result in a waiver of the confidentiality of the records;
2. Records pertaining to adoptions, some medical, psychiatric or psychological information, certain records containing information related to long term care residents, and child abuse and/or neglect records under RC §2151.421 are not subject to disclosure to the public at large pursuant to RC §149.43 or to the person who is the subject of the information pursuant to RC §1347.08. Specific statutes or rules set out under what circumstances these records may be released.
3. Records that fit within the exceptions in RC §149.43 but are subject to the provisions of RC §1347.08. Release of these records to the general public cannot be enforced through mandamus actions under RC §149.43(C) but the state or local governmental agency may choose to release the records at their discretion, unless release of the records is specifically prohibited by state or federal law. However, the information must be released upon request to the subject of the information, the subject's legal guardian, or an attorney with written permission from the subject; and
4. "Public records" which must, upon request, be disclosed to any member of the public who need not express or disclose a reason why the inspection is being requested.

III. FEDERAL & STATE CONFIDENTIALITY STATUTES AND REGULATIONS

As stated in Part I of this memorandum, any record identified as a "public record" must be released upon request. RC §149.43(A)(1) excepts records from being designated as "public records" when there is a federal or state law which prohibits the release of the record or labels it as confidential. The following is a list of federal and state laws which make certain records or information confidential or prohibit their release. The federal and state statutes have been grouped according to program or subject matter.

UNEMPLOYMENT COMPENSATION BENEFITS, TAX AND WAGE RECORDS

Federal Statutes And Regulations:

42 USC § 503(a)(1) and (8): Require that state law provide for such methods of administration as are found by the Secretary of Labor to be reasonably calculated to insure full payment of unemployment compensation when due and restricts expenditure of all moneys received by the State through the Unemployment Insurance Agent to be used solely for the purposes and in the amounts found necessary by the Secretary of Labor for the proper and efficient administration of such law.

These sections have been interpreted by the Department of Labor to provide that employer, wage and claim information collected and maintained for the administration of the unemployment compensation program are confidential and, with a few exceptions, not subject to disclosure (see U.S. Department of Labor Unemployment Insurance Program Letter No. 34-97). This confidentiality requirement pertains to information required from individuals and employers or employing units for the purposes of administration of the revenue and benefit provisions of state UC laws.

42 USC § 1320b - 7: Requires the establishment of an Income and Eligibility Verification System (IEVS) between listed programs with adequate safeguards to assure that information is made available only to the extent necessary to assist in the valid administration of the programs, information exchanged is adequately protected against unauthorized disclosure, notification to applicants and recipients that information in the system may be shared with other agencies, and reimbursement to agencies providing the information.

20 CFR § 603.2: Defines terms used with regard to IEVS including "wage information," "claim information," and "requesting agency."

20 CFR § 603.6: Provides specific requirements for the protection of confidentiality of information that the state unemployment compensation agency must require requesting agencies to comply with to protect the confidentiality of information against unauthorized access or disclosure. These requirements include: 1) information shall only be used as necessary for the valid administration of the program; 2) Information shall not be used for any purposes not specifically authorized by agreement; 3) information shall be stored in a physically secure place; 4) electronic information shall be secured from unauthorized access; 5) requesting agencies shall instruct all personnel of the confidential nature of the information. [Unemployment Insurance Procedure Letter \(UIPL\) 23-96 - Requirements for disclosure of wage record information to private entities.](#)

20 CFR § 603.7: Provides specific confidentiality requirements for state unemployment compensation agencies with respect to the release of Income and Eligibility Verification System (IEVS).

20 CFR § 609.13: Addresses confidentiality of information related to the Unemployment Compensation for Federal Civilian Employee program (UCFE) administered by the state unemployment agency.

20 CFR § 614.14: Addresses confidentiality of information related to the Unemployment Compensation for Ex-Service Members (UCX) administered by the state unemployment agency.

State Statutes And Rules:

RC § 4141.162: Requires the establishment of IEVS, specifies the programs to be included in the system, and provides that the requirements of RC § 4141.21 and any sanctions imposed for improper disclosure of such information apply to the redisclosure of information under this section. The section also requires the adoption of rules to include specific requirements including notification to applicants and recipients that information in the system may be shared with other agencies, that information is made available only to the extent necessary to assist in the valid administration of the programs, and that information is adequately protected from unauthorized disclosures.

RC § 4141.21: Information maintained by or furnished to the director of ODJFS by employers or employees pursuant to RC Chapter 4141 (employment services law) is for the exclusive use and information of ODJFS in the discharge of its duties and is not open to the public and can not be used in any action or proceeding or be admissible in evidence in any action other than one arising under RC Chapter 4141 except as provided in RC §4141.16, §4141.161, §4141.162(IEVS), and subject to RC § 4141.43 (cooperation with certain state, federal and other agencies).

RC § 4141.22: No person shall disclose any information maintained by or furnished to the director of ODJFS by employers or employees unless such disclosure is permitted by RC §4141.22.

RC § 4141.43: Provides the director of ODJFS with discretionary authority to disclose information to various agencies, including but not limited to the bureau of workers compensation, United States IRS, United States employment service, and the railroad retirement board.

RC §5733.42(E): Financial statements and other information maintained by an applicant to ODJFS for an employee training tax credit, and any other information taken for any purpose from such statements or information, are not public records subject to RC §149.43. ODFJS, tax commissioner, or superintendent of insurance may make use of the statements and other information for purposes of issuing public reports or in connection with court proceedings concerning tax credits allowed under this section and RC §5725.31, RC §5729.07, and RC §5747.39.

OAC rule 4141-43-01: Governs the exchange and disclosure of wage, claims, employer, and employment and training information to partners in one-stop systems as permitted by the Work Force Investment Act of 1998, state departments, or other governmental agencies, service providers, and certain nongovernmental agencies for research and for use in providing or improving the provision of employment and training services. This rule strictly prohibits redisclosure of the

information received.

OAC rule 4141-43-02: Allows the sharing of wage, claim and other employment and training information furnished to or maintained by ODJFS pursuant to RC Chapter 4141 with county departments of job and family services, state and county child support enforcement agencies, and governmental agencies administering employment and training and public assistance programs. The rule also allows the sharing of this information with certain civil and criminal prosecuting authorities for use in discharge of their official public duties.

EMPLOYMENT SERVICES (INCLUDING WAGNER - PEYSER)

20 CFR § 658.413: The identity of complainants and any persons who furnish information relating to or assisting, in, an investigation of a job services complaint to ODJFS shall be kept confidential to the maximum extent possible, consistent with applicable law and a fair determination of the complaint. Requires that copy of completed Job Services Complaint/Referral Form be given to the complainant(s) and the appropriate state Job Services official.

RC § 4141.21: Information maintained by or furnished to the director of ODJFS by employers or employees pursuant to RC Chapter 4141 (employment services law) is for the exclusive use and information of ODJFS in the discharge of its duties and is not open to the public and can not be used in any action or proceeding or be admissible in evidence in any action other than one arising under RC Chapter 4141 except as provided in RC §4141.16, RC §4141.161, RC §4141.162(IEVS), and subject to RC §4141.43 (cooperation with certain state, federal and other agencies).

OAC rule 4141-43-01: Sets guidelines for the use and disclosure of wage information, claim information, employment and training information, and employer information.

THE WORKFORCE INVESTMENT ACT (WIA)

20 USCA § 9274: Nothing in WIA should be construed to supersede the privacy protections afforded parents and students under section 444 of the General Education Provisions Act (20 U.S.C. 1232g), as added by the Family Educational Rights and Privacy Act of 1974 or FERPA (section 513 of Public Law 93-80; 88 Stat. 571).

29 CFR § 37.37: Requires each WIA recipient to collect data and records which show that the recipient is in compliance with equal opportunity provisions of the WIA. Any of this data and records that contain information on applicants, registrants, eligible applicants/registrants, participants, terminees, employees and applicants for employment are considered confidential and can only be used for purposes of record keeping and reporting to the Department of Labor. Each WIA recipient must also keep logs of complaints alleging discrimination in relation to providing services under WIA. Any of these logs that contain identifying information of a particular individual must be kept confidential and may be shared only with the Department of Labor and the Governor.

29 CFR §2935(a)(4)(B): Part (A) of this section requires certain WIA records maintained by ODJFS available to the general public. Part (B) excepts requirement of public access to information, the disclosure of which would constitute clearly unwarranted invasion of personal privacy and trade secrets, or commercial or financial information, that is obtained from a person and privileged or confidential.

34 CFR § 99.30(a): This is a FERPA regulation and provides that with certain exceptions, “an educational agency or institution shall obtain a signed and dated written consent of a parent of an eligible student before it discloses personally identifiable information from the student’s educational records.” Personally identifiable information includes but is not limited to: the student’s name; a personal identifier, such as a student’s social security number; and other information that would make the student’s identity easily traceable (34 CFR § 99.3).

OAC rule 4141-43-01: Allows the use and disclosure of wage information, claims information, employment and training information and employer information maintained by ODJFS for the purpose of providing or improving employment and training program as well as research for certain specified purposes. .

OAC rule 4141-43-02: Sets out under what circumstances wage, claim and/or employment and training information maintained by ODJFS can be shared with county departments of job and family services, state and county child support enforcement agencies, and governmental agencies administering employment and training and public assistance programs.

LABOR MARKET INFORMATION

Information maintained or furnished to the director of ODJFS under RC Chapter 4141 as Labor Market Information is governed by the same laws and regulations that govern the underlying confidential information. Labor Market Information may also be subject to confidentiality requirements of the US Bureau of Labor Statistics Commissioner’s Order 3-93.

CASH ASSISTANCE PROGRAMS including Ohio Works First, Refugee Cash Assistance, Disability Financial Assistance and Prevention, Retention, and Contingency

Programs established in Ohio under Title IV-A include all programs that are funded in part with the federal Temporary Assistance for Needy Families (TANF) block grant established by Title IV-A of the Social Security Act, 110 Stat. 2113 (1996), 42 U.S.C. 601, as amended. These programs include Ohio Works First (OWF) established and administered in accordance with Chapter 5107 of the Revised Code, the Prevention, Retention, and Contingency (PRC) Program established and administered in accordance with Chapter 5108 of the Revised Code, and any other program established by the General Assembly or Executive Order issued by the Governor that is administered or supervised by ODJFS pursuant to section 5101.801 of the Revised Code. Other cash assistance programs for which ODJFS is responsible include Disability Financial Assistance (DA financial) and the Refugee Cash Assistance program.

Federal Statutes And Regulations:

42 USC § 602(a)(1)(A)(iv): Requires the states under TANF to take such reasonable steps as the State deems necessary to restrict the use and disclosure of information about individuals and families receiving assistance under the program attributable to funds provided by the Federal Government.

42 USC § 608(a)(9)(B): Requires the states to furnish a federal, state or local law enforcement officer, upon the request of the officer, with, at least, the current address of any TANF recipient if the law enforcement officer needs information that is necessary for the officer to conduct the officer's official duties and the location or apprehension of the recipient is within such official duties; or the officer furnishes the state agency or county agency with the name of a recipient fleeing to avoid prosecution, or custody or confinement after conviction, under laws of the place from which he flees, for a crime, or an attempt to commit a crime, which is a felony under the laws of the place from which the individual flees, or which, in the case of the State of New Jersey is a high misdemeanor; or a recipient is violating a condition of probation or parole imposed under federal or state law.

45 CFR § 205.50: Use of or disclosure of information concerning former recipients of the Title IV-A programs (funded with TANF) is limited to purposes directly connected with: (1) administration of the program; (2) investigations, prosecutions, or criminal or civil proceedings conducted in connection with the program; (3) the administration of any other federal or federally assisted program which provides assistance, in cash or in kind, or services, directly to individuals on the basis of need; (4) administration of a state unemployment compensation program; (5) audits in connection with public assistance programs; and (6) information to the Employment Security Agency as required by law. Information to be safeguarded includes at least: (1) names and addresses of applicants and recipients; (2) information related to a person's economic and social conditions; (3) evaluation of information concerning a particular individual; and (4) medical data. Release or use of information concerning applicants or recipients is restricted to those persons who are subject to standards of confidentiality comparable to the state rules. Generally, notice and consent of an individual is required to release information to an outside source. Courts must also be informed of statutory provisions, rules, and policies against disclosure when a recipient or applicant information is subpoenaed. This provision also applies to IV-E information.

State Statutes And Rules:

RC § 307.983: Each board of county commissioners is required to establish a plan of cooperation among county family services agencies specifying how such agencies will exchange information and coordinate and enhance services and assistance to individuals and families.

RC § 307.987: To the extent permitted by federal law and regulations and state law and rules, contracts entered into by the board of county commissioners, plans of cooperation, regional plans of cooperation, and procedures established for providing services to children who are frequently relocated shall permit the exchange of information to improve services and assistance to individuals and families and the protection of children. Any private or government entity receiving such information shall be bound by the same standards of confidentiality as the entity that provides the information.

RC § 4123.27: Allows the sharing of recipient specific information related to OWF, PRC, Medicaid and DA with the Bureau of Workers Compensation for matching purposes. The statute precludes the Bureau of Workers Compensation from sharing public assistance recipient information with anyone or other agencies except the State Auditor, Governor, Attorney General and select or standing committees of the general assembly.

RC § 5101.181: As part of the procedure for the determination of overpayments charged to a recipient of public assistance, the director of ODJFS shall furnish quarterly the name and Social Security number of each individual who receives public assistance to the Director of Administrative Services, the Administrator of the Bureau of Workers Compensation, and each of the state's

retirement boards. The Auditor of State and the Attorney General or their designees may examine any records whether in computer or printed format, in the possession of the Director of ODJFS or any CDJFS director. Safeguards restrict access to such records to purposes directly connected with an audit or investigation, prosecution, or criminal or civil proceeding conducted in connection with the administration of the programs and compliance with rules of ODJFS restricting the disclosure of information regarding recipients of public assistance is required.

RC § 5101.182: The director of ODJFS, directors of CDJFS, county prosecutors, Attorney General, Auditor of State, or agent or employee of those officials having access to tax returns, or reports of amounts of federal adjusted gross income, names or addresses or other tax information of recipients of public assistance furnished by the tax commissioner for investigatory purposes under this section, shall not divulge or use any such information except for the purpose of determining overpayments of public assistance, or for an audit, investigation, or prosecution, or in accordance with a proper judicial order.

RC § 5101.26: Sets out definitions of terms for confidentiality purposes.

RC § 5101.27: Sets out confidentiality requirements for all public assistance programs including OWF, Medicaid, DA medical, DA financial, Food Stamps, PRC, and other Title IV-A programs.

RC § 5101.271: Sets out the required elements to be contained in a consent form allowing the release of public assistance recipient specific information to third parties.

RC § 5101.28: Requires CDJFS and ODJFS to share applicant, recipient and former recipient specific OWF, DA financial and PRC information with law enforcement agencies as defined in the RC § 5101.26 for any legitimate law enforcement purpose and the State Auditor's Office for statutory audit purposes.

RC § 5101.30: Gives ODJFS authority to adopt rules in accordance with Chapter 119 of the Revised Code implementing sections 5101.26 to 5101.30 of the Revised Code and governing the custody, use and preservation of the information generated or received by the state department, county agencies, other state and county entities, contractors, grantees, private entities, or officials participating in the administration of public assistance programs.

RC § 5101.80: ODJFS is the single state agency for the administration and supervision of the administration of all Title IV-A programs. No county or state agency administering a Title IV-A program may establish, by rule or otherwise, a policy governing a Title IV-A program that is inconsistent with a Title IV-A program established, in rule or otherwise, by ODJFS.

OAC rule 5101-22-15: ODJFS rule related to the personal systems information act (Chapter 1347). See Part II of this memorandum.

OAC rule 5101:1-1-03: (Nondiscrimination and Protection of the Applicants, Recipients, and Former Recipients Rights to Privacy) addresses the release of OWF, PRC, TANF and DA financial information held by ODJFS or a CDJFS specific to an applicant, recipient or former recipient. This is an extremely important rule and should be consulted when this type of information is requested by any third party. The rule describes under what general circumstances the information can be released, exceptions to the general requirements, what is required in information releases, and procedures to follow if information is requested through court process.

OAC rule 5101:1-1-36: Match information for IEVS which contains federal tax data must be

protected from disclosure to unauthorized person. The rule states that computer screen printouts or copies of letters mailed or received regarding Federal Tax Information must be safeguarded. The rule requires that Federal Tax Information not be commingled within an assistance group case record. The rule then sets out under what circumstances and to whom the Federal Tax Information can be released.

OHIO HEALTH PLANS including Medicaid, Disability Medical Assistance, CHIP I and II, and Refugee Medical Assistance.

Federal Statutes And Regulations:

42 USCA § 1396r-8(b)(3)(D): Information disclosed by manufacturers or wholesalers in relation to the best price for outpatient drugs is confidential and shall not be disclosed by the Secretary of HHS or ODJFS in a form which discloses the identity of a specific manufacturer or wholesaler, prices charged for drugs by such manufacturer or wholesaler, except as the Secretary of HHS determines to be necessary to carry out related regulations. The Comptroller General may review the information provided.

42 CFR § 2.1: Sets out circumstances under which drug abuse and or treatment patient information can be released and prohibitions against redisclosure.

42 CFR § 431.300: Access to Medicaid information must be safeguarded by the state and the use of this information must be restricted to purposes directly connected with the administration of the Medicaid program.

42 CFR § 431.302: Defines "purposes directly connected with the administration the Medicaid program" to include: (1) establishing eligibility; (2) determining the amount of medical assistance; (3) providing service for recipients; and (4) conducting or assisting an investigation, prosecution, or civil or criminal proceeding related to the administration of Medicaid.

42 CFR § 431.305: Requires Medicaid information that must be safeguarded to include; (1) names and addresses; (2) medical services provided; (3) social and economic conditions or circumstances; (4) agency evaluation of personal information; (5) medical data, including diagnosis and past history of disease or disability; (6) information received for verifying income and amount of medical assistance payment; and (7) information received in connection with the identification of a third party resource.

42 CFR § 431.306: There must be rules governing the release and use of Medicaid information and persons who receive the information must be subject to a confidentiality standard comparable to those of the state. These regulations require notification and the obtaining of permission from the subject of the information before responding to a request for information from an outside source unless there is an emergency situation wherein the subject of the information must be notified immediately after the release. Section (f) requires that, pursuant to a court subpoena of a person's Medicaid information, the court must be informed of applicable statutory provisions, policies, and regulations restricting disclosure of information. Section (g) and (h)

requires intra agency agreements if information is shared in certain situations.

42 CFR § 435.945: Requires that Medicaid eligibility and the amount of medical assistance payments be verified. Requires that the eligibility and medical assistance payment information be supplied to other agencies in the state, agencies in other states and to federal programs for programs listed in 42 CFR § 435.948(a)(6) (AFDC, Medicaid, State-administered supplementary payment programs under Section 1616(a) of the Act, SWICA, Unemployment compensation, Food Stamps, and any state program administered under a plan approved under Title I, X, or XIV); child support enforcement program under Title IV-D; SSA for old age, survivors and disability benefits under title II; and in relation to SSI benefits. The regulation requires that applicants and persons being redetermined for eligibility be informed in writing how the eligibility and medical benefits will be used. This regulation also requires written agreements with other agencies before releasing data or requesting data from other agencies and sets out what must be in those agreements.

42 CFR § 483.315(i): Specifies under what circumstances data from the federal Resident Assessment Instrument (RAI/MDS+) for long term care facilities can be released.

45 CFR § 160 Subpart A, B and C: These are the general provisions of the Health Insurance Portability and Accountability Act (HIPAA) which define certain terms, speak to applicability of the Act and relationship of the Act to state laws. The definitions include Medicaid as subject to the Act.

45 CFR § 164 Subpart A and E: These are the security and privacy regulations concerning HIPAA. (See Frequently Asked Questions #12).

State Statutes And Rules:

RC § 173.20: Gives the Department of Aging Long Term Care Ombudsman, under certain circumstances and unless prohibited by law, access to any records, including medical records of a nursing facility resident that are reasonably necessary for investigation of a complaint.

RC § 173.22: Makes the investigation files of the Department of Aging Long Term Care Ombudsman confidential and allows disclosure of the records only at the discretion of the state ombudsman, the regional program maintaining the records, or by court order.

RC §§ 2305.24 and 2305.251: Concerns confidentiality pursuant to hospital utilization review and peer review organization material. These statutes may be marginally relevant if the ODJFS obtains these records through Medicaid related reviews and subpoenas are issued which may encompass this information.

RC § 3701.243: Prohibits state or local governments that acquire certain AIDS related information while providing any health care services from disclosing or compelling another to disclose the information unless the release falls within exceptions contained in sections 3701.243 or 3701.248. The information protected under Section 3701.243 is: the identity of a person on whom an HIV test is performed; the results of an HIV test that would identify a person or the identity of a person who has been diagnosed with AIDS or an AIDS-related condition.

RC § 3701.028: No person or government entity receiving certain information from the Health Department relating to the program for medically handicapped children and of programs funded with funds received from the "Maternal and Child Health Block Grant" Title V of the "Social Security Act," 95 Stat. 818 (1981), 42 U.S.C.A. §701, as amended, may release that information

without the consent of the subject of the information or the subject's guardian (if the subject is a minor) except as necessary to administer the program for medically handicapped children or other programs funded with money received from the "Maternal and Child Health Block Grant," coordinate the provision of services under the programs with other state agencies and city and general health districts, or coordinate payment of providers. The records that are subject to this statute are: records that pertain to medical history, diagnosis, treatment, or medical condition; reports of psychological diagnosis and treatment and reports of social workers; and reports of public health nurses.

RC § 4123.27: Allows the sharing of recipients of OWF, PRC, Medicaid and DA with the Bureau of Workers Compensation for matching purposes. The statute precludes the Bureau of Workers Compensation from sharing public recipient information with anyone or other agencies except the State Auditor, Governor, Attorney General and select or standing committees of the general assembly.

RC § 5101.26: Sets out definitions of terms for confidentiality purposes.

RC § 5101.27: Sets out confidentiality requirements for all public assistance programs including OWF, PRC, Food Stamps, DA financial, DA medical, refugee medical services, CHIP I and II, and Medicaid.

RC § 5101.271: Sets out the required elements to be contained in a consent form allowing the release of public assistance recipient specific information to third parties.

RC § 5101.572: Third party insurers or insurance programs which may be liable to pay all or part of the medical costs of a Medicaid applicant/recipient may give or receive confidential information regarding such applicants/recipients, upon request of ODJFS. ODJFS must limit its use of information gained from such third parties to purposes directly connected with the administration of the Medicaid program. No third party may disclose to other parties or make use of any information regarding recipients of OWF or medical assistance that the third party receives from ODJFS.

RC § 5111.01: ODJFS is the single state agency for the supervision of the administration of the Medicaid program. ODJFS rules are binding on all state and county agencies that administer components of Medicaid. No state or county agency may establish a policy that is inconsistent with a Medicaid policy established, by rule or otherwise, by ODJFS.

RC § 5111.61: Provides that, without a court order, ODJFS and any contracting agency shall not release the identity of any resident of a nursing facility; the identity of any individual who submits a complaint about a nursing facility and has requested confidentiality; or any information that would reasonably tend to disclose the identity of any individual described previously and that records containing information concerning the aforementioned persons are non-public records under RC §149.43.

RC § 5112.21: Except as specifically required by RC §5112.01 to RC §5112.19 of the (Hospital Care Assurance Program), information filed under those sections shall not include any patient-identifying material. Information that includes patient-identifying material is not a public record under section 149.43 of the Revised Code, and no patient-identifying material shall be released publicly by the department of Job and Family Services or by any person under contract with the department who has access to such information.

OAC rule 5101-22-15: ODJFS rule related to the personal systems information act

(Chapter 1347). See Part II of this memorandum.

OAC rule 5101:1-37-01.1: Addresses the release of medicaid, DA medical, refugee medical program and CHIPS I and II recipient specific information held by ODJFS or a CDJFS. This is an extremely important rule and speaks to contractor situations and provides additional authority to release information beyond those circumstances set out in RC 5101.27. It also requires nondiscrimination in the delivery of medical assistance programs and sets out certain safeguards and security for information received from the social security administration.

OAC rule 5101:1-38-05: Allows the sharing of names of children identified with high lead levels with the Ohio Department of Health.

OAC rule 5101:1-39-06: Cites federal law requiring the Social Security Administration to share resource transfer information of individuals applying for Supplemental Security Income. The rule then allows ODJFS to share this information with the CDJFS within which county the subject of this information resides.

OAC rule 5101:3-1-08(D): Requires notification to the third party tort unit or third party subrogation contractor when financial information related to medical services from a Medicaid provider is requested by a Medicaid recipient or the Medicaid recipient's attorney. The rule requires the Medicaid provider to put specific language on any records released to the Medicaid recipient or the recipient's attorney.

OAC rule 5101:3-26-032: Addresses the sharing of drug and alcohol screening information by prenatal medical service providers (PMSP) in mandatory managed care counties who screen pregnant women for possible abuse of alcohol and/or other drugs.

OAC rule 5101:3-26-082(B)(6): No information or text that identifies the addressee as a medicaid recipient may appear on the outside of any MCP or MCP subcontractor mailing.

OAC rule 5101:3-30-05: Addresses the sharing of information between an Alcohol and other Drug provider (AOD) and a PMSP or CDJFS in mandatory managed care counties wherein pregnant women are assessed and referred after screening for alcohol or other drug treatment.

OAC rule 5101:3-40-01 Appendix C: Requires that HCBS Waiver VI recipient information be held in confidence.

OAC rule 5101:3-41-01 Appendix C: Requires that HCBS Waiver VII recipient information be held in confidence.

OAC rule 5101:6-50-07: Allows, when a RC Chapter 119 hearing has been requested, discovery of any matter which is not privileged or confidential except in cases involving actions under RC chapters 5103 and 5104 (child day care licensing and children's residential licensing).

FOOD STAMPS

Federal Statutes and Regulations:

7 USC 2020(e)(8): Sets out requirements for states in releasing applicant, recipient and former recipient's Food Stamp information.

7 CFR § 272.1(c): Restricts the release of information obtained from Food Stamp applicants/recipients to specific persons and situations. They are: (1) persons directly connected with the administrative enforcement of the Food Stamp Act; (2) persons connected with other federal assistance programs providing assistance on a means tested basis to low income individuals; (3) general assistance programs which are subject to the joint processing requirements in 7 CFR §273.2(j)(2); (4) persons connected with the administrative or enforcement of the Income Eligibility Verification System (IEVS); (5) persons directly connected with IV-D child support; (6) employees of Federal Health and Human Services to verify eligibility or benefits; (7) employees of federal comptroller for audit purposes; (8) local, state or federal law enforcement officials in connection with Food Stamp Act violations (must be in writing and contain identity of individual requesting information, authority to do so, violation being investigated, and identity of person investigated); and (9) written request from food stamp recipient or authorized representative except for information concerning the status of a pending investigation or the identity of informants. It should also be noted that the persons receiving the information must protect the information from unauthorized disclosure to other persons. General information which does not identify specific food stamp recipients are "public records" and must be made available to the general public upon request.

7 CFR § 273.2: Language has been deleted from the previous version of this regulation which required oral or written notification to a Food Stamp recipient when a third party collateral contact was made by an agency for eligibility purposes.

State Statutes And Rules:

RC §5101.26: Sets out definitions of terms for confidentiality purposes.

RC §5101.27: Sets out confidentiality requirements for all public assistance programs including OWF, PRC, Medicaid, DA medical, DA financial, Refugee Cash, CHIP I and II, Refugee Medical and Food Stamps. Specific Food Stamp confidentiality requirements are set out in detail in the OAC rules.

RC §5101.271: Sets out the required elements to be contained in a consent form allowing the release of public assistance recipient specific information to third parties.

OAC rule 5101-22-15: ODJFS rule related to the personal systems information act (Chapter 1347). See Part II of this memorandum.

OAC rule 5101:4-1-13: Governs the disclosure of Food Stamp information. This section reflects RC Chapter 1347 and 7 CFR § 272.1.

OAC rule 5101:4-2-09: States that a release signed by a Food Stamp applicant or recipient is not necessary when a CDJFS is attempting to secure verification from collateral sources for Food Stamp eligibility purposes. References OAC rule 5101:4-1-13 as governing the release of IEVS information.

OAC rule 5101:4-3-08: Requires the reporting of illegal aliens who apply for Food Stamps to the INS.

OAC rule 5101:4-3-22(F): Sets out the acceptable purposes for utilizing a FS recipient's social security number.

OAC rule 5101:4-7-09(B): Requires the safeguarding of all IEVS information used for FS purposes.

OAC rule 5101:4-8-30(R): Requires safeguarding of tax information used for the FS Treasury Offset Program.

CHILD SUPPORT ENFORCEMENT

Federal Statutes and Regulations:

42 USC § 653: Addresses confidentiality of the Federal Parent Locator System and to whom the information may be released (authorized person defined in the statute).

42 USC § 654(26): Requires the state to protect confidential child support information.

42 USC § 654(d): Addresses security and confidentiality for computerized support enforcement systems in operation after October 1, 1997.

45 CFR § 235.70: Allows county Job and Family Services departments to send a copy of the ADC case record and other relevant information to a CSEA.

45 CFR § 303.15: Allows use of the Federal Parent Locator Service (FPLS) for enforcing any state or federal law with respect to the unlawful taking or restraint of a child or making or enforcing a child custody or visitation determination. This information is given to the IV-D agency and pursuant to an agreement between the FPLS. Access to the FPLS information shall be restricted only in connection with child custody or parental kidnaping cases. After information is requested from FPLS and then sent to a requestor, the IV-D agency must destroy any confidential records and information related to the request.

45 CFR § 303.30: Allows access by IV-D to obtain IV-A or IV-E information not supplied by the agencies holding the information and allows the obtaining of medical support information with the consent of a non-recipient and without the consent of a Medicaid applicant or recipient.

45 CFR § 303.70: Makes parent locator information confidential.

45 CFR § 307.13: Requires that information contained in SETS be confidential and be released only in connection with the IV-D (child support), IV-A (TANF), and Title XIX(Medicaid) programs.

State Statutes And Rules:

RC § 149.43 (A)(1)(e): Excludes information contained in the putative father registry from being considered as public record when held by ODJFS or a CSEA.

RC § 149.43(A)(1)(o): Excludes new hire and rehire records provided by employers to ODJFS and child support purposes from being considered as public records.

RC § 3121.76: Limits the use of information received by ODJFS from a financial institution through an agreement pursuant to the statute to purposes of establishment, modification or enforcement of a child support order.

RC § 3121.84: Sets out the types of matches that must be done with the case registry of all child support orders and to what governmental entities the matches should be shared.

RC §3121.898: New Hire data shall only be used for the purpose of locating individuals for purposes of establishing paternity, establishing, modifying and enforcing support orders being administered by CSEA's in Ohio and to detect fraud in any program administered by ODJFS. The new hire information shall also be shared with the Bureau of Workers Compensation.

RC § 3121.899: New hire information shall not be considered as public record information pursuant to RC § 149.43 and shall be used for the purpose of locating individuals for purposes of establishing paternity, establishing, modifying and enforcing support orders being administered by CSEA's in Ohio and to detect fraud in any program administered by ODJFS. The new hire information shall also be shared with the Employment Services units of ODJFS and the Bureau of Workers Compensation.

RC § 3123.92: Requires any CSEA administering a court or CSEA enforceable finding of default against an obligor to contact at least one consumer reporting agency in the State and provide to the consumer reporting agency the obligor's name, address, and social security number or other identification number and any other identifying information concerning the obligor. This statute also requires the CSEA to provide written confirmation to a consumer reporting agency, upon the request of an obligor, when the obligor has paid off his/her arrearage.

RC § 3123.93: Allows credit reporting agencies access to a new case registry ODJFS is required to establish and maintain pursuant to RC § 3121.81.

RC § 3125.49: Precludes ODJFS Office of Child Support or any CSEA from using social security numbers made available from the local registrar of vital statistics for any purpose other than child support enforcement.

RC § 3125.16: Allows each obligor and obligee under a support order to review all records related to support orders held by CSEA's and any other information maintained by the CSEA, except to the extent prohibited by state or federal law.

RC § 3125.50: Authorizes release of information concerning applicants for and recipients of child support services by CSEA's only under rules promulgated by ODJFS. This statute also precludes release of information collected from any officer or entity of the state or any political subdivision of the state that would aid the CSEA in locating an absent parent; any information concerning the employment, compensation, and benefits of any obligor or obligee subject to a support order; name and address of any obligor or obligee subject to a support order and the obligor's employer in the customer records of a public utility; and the Department of Taxation except as provided by rules promulgated by ODJFS.

RC § 3125.08: Sets out limits for access and use of SETS information.

RC § 3123.954: Precludes a CSEA from providing the address or other identifying information of an obligee to the ODJFS Office of Child Support Enforcement when the CSEA submits the name of the obligor to be included on a poster.

OAC rule 5101-22-15: ODJFS rule related to the personal systems information act (Chapter 1347). See Part II of this memorandum.

OAC rule 5101:1-1-03 : (Nondiscrimination and Protection of the Applicants, Recipients, and Former Recipients Rights to Privacy) addresses the release of ADC, TANF, OWF, and DA-cash information held by ODJFS or a CDJFS specific to an applicant, recipient or former recipient. This is an extremely important rule and should be consulted when this type of information is requested by any third party. The rule describes under what general circumstances the information can be released, exceptions to the general requirements, what is required in information releases, and procedures to follow if information is requested through court process.

OAC rule 5101:1-29-071: Generally addresses the confidentiality of obligor, obligee and child, child support information. Contains some guidelines which are reflected in RC §149.43 and RC §1347.08.

OAC rule 5101:1-29-072: Outlines the procedures for the safeguarding and security of information contained in SETS for use by private vendors who contract with CSEA's to secure child support on the CSEA's behalf.

OAC rules 5101:1-29-341 and 5101:1-29-342: Allows CSEA's to give out certain information concerning an obligor of child support to a consumer reporting agency.

OAC rule 5101:1-29-96 Requires that certain paternity and child support information be shared with a CDJFS.

OAC rule 5101:1-30-01: Permits access to the Ohio Parent Locator Service for the purpose of establishing paternity or securing child support.

OAC rule 5101:1-30-03: Requires child support agencies that wish to utilize the "Federal Parent Locator Service" to submit a certification that, among other things, information received from the service will be treated as confidential, its use will be limited to locating absent parents and the CSEA is aware that unauthorized use or disclosure of federal tax or other information obtained from the service could result in criminal penalties.

OAC rule 5101:1-30-04: Allows use of Ohio Parent Locator Service to assist in enforcing the law with respect to the unlawful taking of a child or establishing or enforcing a child custody determination. The release of the information is authorized to release the information upon receipt of a local court request or a written request from law enforcement with a missing child report.

OAC rule 5101:1-30-12: Sets out for what purposes new hire information can be used. This rule tracks the language in RC §5101.312.

OAC rule 5101:1-30-13: Sets out what must be contained in agreements between CSEA's and financial institutions including a statement that information received is not considered a public records pursuant to RC §149.43.

OAC rule 5101:1-30-14: Any information obtained from a financial institution for multi state financial data matches is not considered a public record pursuant to RC §149.43.

OAC rule 5101:1-30-586: When an obligee or obligor seeks issuance or modification of a support order or paternity, certain information must be supplied to the tribunal addressing the

issues. The rule allows a tribunal to order that the address of a child or party or other identifying information not be disclosed in a pleading or other document filed in a proceeding under UIFSA if a tribunal has made a finding, that may be made ex parte, that the health safety, or liberty of a party or child would be unreasonably put at risk by the disclosure of the identifying information.

OAC rule 5101:1-30-65: Sets out restrictions concerning the release of information obtained through the IRS.

OAC rule 5101:1-37-01.1: Allows the sharing of Medicaid, DA medical, CHIP I and II, and Refugee Medical Services recipient information with ODJFS child support or CSEA's when release is for the purpose of securing child support.

CHILDREN SERVICES AND CHILD DAY CARE

Federal Statutes and Regulations:

42 USC § 671(a)(8): Requires that all state plans involving foster care and adoption assistance provide safeguards which restrict the use or disclosure of information concerning the programs under IV-B.

42 USC § 5106a(b)(2)(A)(vi): The state plan required by 42 USC 5106(b)(2)(A) also must include provisions which allow for public disclosure of the findings or information about the case of child abuse or neglect which has resulted in a child fatality or near fatality.

42 USC § 5106a(b)(2)(A)(viii): Federal grants for child protective services require a state plan coordinated with a state plan under part B of title of the Social Security Act including an assurance (among other assurances) that the state has developed methods to preserve the confidentiality of all records in order to protect the rights of the child and of the child's parents or guardians. The methods to preserve the confidentiality can include that reports and records made and maintained pursuant to the purposes of this Act only be made available to individuals who are the subject of the report; federal, state, or local government entities, or any agency of such entities having a need for such information in order to carry out its responsibilities under law to protect children from abuse and neglect; child abuse citizen review panels; a grand jury or court upon a finding that information in the record is necessary for the determination of an issue before the court or grant jury; and other entities or classes of individuals statutorily authorized by the state to receive such information pursuant to a legitimate state purpose. It should be noted that ODJFS has taken the position that the list of permissible circumstances under which abuse and neglect information can be released is permissive and that Ohio can be more restrictive with information than what is set out in this statute.

42 USC § 5106a(c)(4)(B)(i): Members and staff of a citizen review panel related to child abuse and neglect, child fatalities or foster care shall not disclose to any person or government official any identifying information about any child protective case with respect to which the panel is provided information and shall not make public other information unless authorized by state statute.

42 USC § 5106a(c)(5)(A): Requires that each state that establishes a citizens panel provide the panel access to information on cases that the panel desires to review if such information is necessary for the panel to carry out its functions.

42 USC § 5106a(c)(6): Requires that each citizen panel prepare and make available to the public, on an annual basis, a report containing a summary of the activities of the panel.

45 CFR § 1340.14(i): This regulation requires that the State provide by statute that records concerning reports of child abuse and neglect be confidential and that their disclosure be a criminal offense (reference RC §2151.421). This regulation specifies certain circumstances where release of the records would be acceptable but only if the state authorizes it through statute.

45 CFR § 1355.21: Requires that each state plan for IV-E and IV-B adhere to safeguards set out in 45 CFR § 1355.30.

45 CFR § 1355.30(p)(3): Requires that safeguarding of IV-E and IV-B information adhere to restrictions set out in 45 CFR § 205.50.

45 CFR § 205.50: The restrictions set out in this regulation were the same ones that restricted the release of Aid for Dependent Children applicant, recipient and former recipient information. This regulation restricts use of information to purposes directly connected with: (1) administration of the program; (2) investigations, prosecutions, or criminal or civil proceedings conducted in connection with the program; (3) the administration of any other federal or federally assisted program which provides assistance, in cash or in kind, or services, directly to individuals on the basis of need; (4) administration of a state unemployment compensation program; (5) audits in connection with public assistance programs; and (6) information to the Employment Security Agency as required by law. Information to be safeguarded includes at least: (1) names and addresses of applicants and recipients; (2) information related to a person's economic and social conditions; (3) evaluation of information concerning a particular individual; and (4) medical data. Release or use of information concerning applicants or recipients is restricted to those persons who are subject to standards of confidentiality comparable to the state rules. Generally, notice and consent of an individual is required to release information to an outside source. Courts must also be informed of statutory provisions, rules, and policies against disclosure when a recipient or applicant information is subpoenaed.

State Statutes and Rules:

RC § 121.37: Records identifying individual children maintained by the Family and Children First Cabinet council are confidential and shall be disclosed only as provided by law.

RC § 149.43 (A)(1)(e): Excludes information contained in the putative father registry from being considered as public record.

RC § 307.67: Allows child fatality review boards access to summary information from PCSA's, PCPA's, agencies that provide services specifically to a child or family, law enforcement agencies, or other public or private entity that provided services to a child whose death is being reviewed by the Board. The Board also can access confidential abuse and neglect investigatory records. The Board must preserve the confidentiality of any records received pursuant to this statute. If the death of a child is being investigated or the prosecutor is seeking to prosecute someone for causing the death of a child, the Board is not entitled to the prosecutor's information unless the prosecuting attorney agrees to provide it.

RC § 307.628: Immunizes from civil liability an individual or public or private entity providing

information, documents, or reports to a child fatality review board for any injury, death, or loss to person or property that otherwise might be incurred or imposed as a result of providing the information, documents, or reports to the review board.

RC § 1347.08(F)(2): Excludes access to the putative father registry by the subject, guardian of subject or an attorney with written permission from the subject of information in the putative father registry.

RC § 2151.141: States that if a complaint is filed with respect to a child pursuant to Section 2151.27 which alleges that a child is abused, neglected, or abandoned; certain specified persons or entities providing any services to the child or preparing a social summary may request records concerning the child. Any CSB receiving a request under this statute for the records must provide them unless release of the information is prohibited by law. If the CSB determines that it cannot release the requested information, it must file a motion in the court where the complaint was filed setting out its reasons for not complying with the request and the court will rule whether the CSB was correct in its motion.

RC § 2151.142: Makes residential addresses of each office or employee of a public children services agency or a private child placing agency who performs official responsibilities or duties described in RC §2151.14, RC §2151.141, RC §2151.33, RC §2151.412, RC §2151.413, RC §2151.414, RC §2151.415, RC §2151.416, RC §2151.417, or RC §2151.421 or another section of the Revised Code and to the residential address of persons related to that officer or employee by consanguinity or affinity, confidential and must be redacted if contained in records containing information subject to release under RC §149.43. The residential address must be disclosed to a journalist if certain requirements are met.

RC § 2151.421: Certain professionals (listed in the statute) must report and others may report cases of child abuse/neglect to the County Children Services Board, or CDJFS whichever exercises the children services function. The County Children Services Board or CDJFS must investigate any reports made pursuant to this statute. Any report made under this section is confidential. Paragraphs (M) and (N) allow sharing of specified information from an investigation (eg. allegations, alleged perpetrator and disposition) with designated officials of an out of home care entity when the abuse and neglect is alleged to have occurred in that entity.

RC § 2151.86: Requires that the appointing authority or hiring officer of any entity that employs any person responsible for a child's care in an out-of-home care setting have a criminal BCI check completed on all prospective employees. The statute requires a criminal BCI check on all prospective adoptive parents and prospective foster parents. The report of any criminal records check conducted by BCI pursuant to this statute is not a public record for the purpose of RC §149.43 and shall not be made available to any person other than the applicant, prospective adoptive parents, or prospective foster parents who is the subject of the criminal records check or his representative; the entity requesting the criminal records check or its representative; the state department of Job and Family Services or a county department of Job and Family Services; and any court, hearing officer, or other necessary individual involved in a case dealing with the denial of employment to the applicant or the denial of consideration as an adoptive parent or foster parent.

RC § 3107.17: All records relating to placements under RC §5103.16 or adoptions are confidential, and subject to inspection only upon consent of the court. The section also prescribes ODJFS' authority to regulate the adoptive parent's or adoptive child's access to biological information of the natural parent.

RC § 3107.42: Declares certain specific adoption records non-public records under RC

§149.43. This statute should be considered in conjunction with RC §3107.17 when adoption records are requested.

RC § 3109.051(H): Sets out under what circumstances a keeper of a record related to a particular child may preclude access to the record when access is requested by a non-custodial parent.

RC § 3705.09: Provides that when a birth certificate is changed to add a father's name once paternity is established, the old birth certificate and supporting documentation which prompted issuing the new birth certificate is sealed and cannot be released without a court order. All copies of the previous birth certificate held by a vital statistics registrar must be destroyed.

RC § 3705.12: Sets out guidelines for having the department of health prepare a new birth certificate for an individual that is adopted. The statute states that upon the issuance of the new birth record, the original birth record and any index references shall cease to be a public record.

RC § 3705.23: Makes information contained in the "information for medical and health use only" portion of the birth certificate confidential and only allows release of this information for statistical or research purposes under requirements set out by the Ohio Department of Health pursuant to rule.

RC § 5101.27: Sets out confidentiality requirements for information regarding recipients of services under Chapter §5104.

RC § 5101.29: Excludes names and other identifying information regarding children enrolled in or attending a child day-care center or home subject to licensure, certification, or registration to ODJFS or other state or local entity responsible for enforcing Chapter §5104 from being considered as public records pursuant to RC §149.43. This statute also excludes names and other identifying information regarding a person who makes an oral or written complaint regarding a child day-care center or home subject to licensure, certification, or registration to the state department or other state or county entity responsible for enforcing Chapter §5104 from being considered as public records pursuant to RC §149.43.

RC § 5104.011(B)(7): Administrators of each child day-care center shall prepare at least once annually and for each group of children attending the center and upon request shall furnish the roster for each group to the parents, custodians, or guardians of the children in that group. The administrator may prepare a roster of names and telephone numbers of all parents, custodians, or guardians of children attending the center and upon request shall furnish the roster to the parents, custodians, or guardians of the children who attend the center. The administrator shall not include in any roster the name or telephone number of any parent, custodian, or guardian who requests the administrator not to include his name or number and shall not furnish any roster to any person other than a parent, custodian, or guardian of a child who attends the center.

RC § 5104.011(C)(2): The administrator of each child day-care center shall maintain enrollment, health, and attendance records for all children attending the center and health and employment records for all center employees. The records shall be confidential, except as otherwise provided in division (B)(7) of this section and except that they shall be disclosed by the administrator to the director of ODJFS upon request for the purpose of administering and enforcing this chapter and rules adopted pursuant to this chapter. Neither the center nor the licensee, administrator, or employees of the center shall be civilly or criminally liable in damages or otherwise for records disclosed to the director of ODJFS by the administrator pursuant to this division. It shall be a defense to any civil or criminal charge based upon records disclosed by the administrator to

the director of ODJFS that the records were disclosed pursuant to this division.

RC § 5104.012: Requires a criminal BCI check of all applications for employment at type-A and type-B daycare homes. The report of the criminal BCI check is not a public record for the purposes of RC §149.43 and is not to be made available to any person other than the applicant who is the subject of the criminal records check or his representative; the center, type-A home, or certified type-B home requesting the criminal records check or its representative; the state department of Job and Family Services or a county department of Job and Family Services; and any court, hearing, hearing officer, or other necessary individual involved in a case dealing with the denial of employment to the applicant.

RC § 5104.013: Requires ODJFS as part of licensure of child day-care centers and type-A family day-care homes to conduct criminal BCI checks on owners, licensees or administrators of the day-care center; any owner, licensee, or administrator of a type-A family day-care home and any person eighteen years of age or older who resides in a type-A family day-care center. Any criminal BCI report completed pursuant to this statute is not a public record under RC §149.43 and shall not be made available to any person other than the person who is the subject of the criminal records check or his representative, the director of Job and Family Services, the director of a county department of Job and Family Services, the center, type-A home, or type-B home involved in a case dealing with a hearing officer, or other necessary individual involved in a case dealing with a denial of licensure or certification related to the criminal records check.

RC § 5153.111: The executive director of a PCSA is required to have a criminal BCI check done on all prospective employees applying for employment with the agency which require the employee to be responsible for the care, custody, or control of a child. The report of any criminal BCI check pursuant to this statute is not a public record under RC §149.43 and cannot be made available to any person other than the applicant who is the subject of the criminal records check or his representative, the public children services agency requesting the criminal records check or its representative, and any court, hearing officer, or other necessary individual involved in a case dealing with the denial or employment to the applicant.

RC § 5153.17: County children services boards or county department of Job and Family Services performing the children service function, must keep records of investigations and all other records required to be kept by ODJFS Services confidential. These records, however, shall be open to inspection by the board, Ohio Department of Job and Family Services, the director of the county department of job and family services, and other persons upon written permission of the executive secretary.

RC § 5153.171: Requires the Director or Executive Secretary of a public children agency to confer with the county prosecutor in relation to a request for information about a child who was under eighteen years of age, who was a resident of the county served by the agency at the time of the child's death and whose death may have been caused by abuse, neglect, or other criminal conduct. If the county prosecutor intends to prosecute a person for causing the child's death, the prosecuting attorney decides what information may be released, if any. The prosecutor is required to notify the PCSA Director or Executive Secretary of the intent to prosecute and the determination of what information may be released. The Director or Executive Secretary may only release the information designated by the prosecutor. If the prosecutor does not intend to prosecute a person for causing a child's death, the prosecutor shall notify the Director or Executive Director of the PCSA who shall release the information described in RC § 5153.172. This statute shields the Director or Executive Secretary of a PCSA from civil or criminal prosecution if the Director or Executive Secretary of the PCSA, in good faith, released information authorized in accordance with RC §5153.171.

RC § 5153.172: Notwithstanding RC §2151.421, RC §3701.243 and RC §5153.17 or any other section of the Revised Code pertaining to confidentiality and unless precluded by RC § 5153.173, the PCSA Director shall disclose about a deceased child; the child's name, summary report of abuse or neglect reports made pursuant to RC §2151.421 of which the child was subject, final disposition of the report or status of the investigation, services provided to the or purchased for the child by the PCSA, actions taken by PCSA in response to the a report of child abuse and neglect. Names of parents and siblings of the child; contents of psychological, psychiatric, therapeutic, clinical or medical reports or evaluations regarding the child; witness statements; police or other investigative reports; or any other information other than stated in this statute are prohibited from being released pursuant to this statute.

RC § 5153.173: A common pleas court can provide an order to stop the release of information required to be released pursuant to RC §5153.172 upon a motion by the PCSA which alleges that disclosing this information would not be in the best interest of a deceased child's sibling or another child residing in the deceased child's household.

OAC rule 5101-22-15: ODJFS rule related to the personal systems information act (Chapter 1347). See Part II of this memorandum.

OAC rule 5101:2-5-091(M): Sets out under what circumstances a Bureau of Criminal Identification and Investigation (BCII) report completed for Private Children Placing Agency (PCPA) or Public Children Services Agency (PCSA) employment purposes or for foster caregiver applicants seeking certification may be made available to anyone.

OAC rule 5101:2-7-04: A foster caregiver must maintain a record on each foster child and the rule specifies what must be included in these records. The rule then goes on to preclude the foster caregiver from knowingly allowing the disclosure of any information regarding the foster child or the foster child's family to persons not directly involved in the foster child's care and treatment on an official basis.

OAC rule 5101:2-12-08: Requires ODJFS to keep copies of all complaint disposition reports related to licensed child day-care centers. The complaint disposition records with confidential information deleted shall be released to anyone who requests it in writing.

OAC rule 5101:2-12-54: Governs disclosure of names and telephone numbers of parents, custodians or guardians of children attending a child day care center contained on rosters which are required to be kept.

OAC rule 5101:2-12-59: Makes enrollment, health, and attendance records maintained by a day care center, confidential. This rule refers to records kept under Chapter 5104 and brings in requirements of RC chapter 1347.

OAC rule 5101:2-13-08: Requires ODJFS to keep copies of all complaint disposition reports related to licensed type A family day-care homes. The complaint disposition records with confidential information deleted shall be released to anyone who requires it in writing.

OAC rule 5101:2-13-26: Requires employees of type A daycare homes to receive a BCII check. Record check results are not public record and shall not be made available to any person other than the person who is the subject of the records check or his representative, the type A home administrator, owner, owner's designee, or ODJFS.

OAC rule 5101:2-13-32: Each type A daycare home is required to have a roster of parents and guardians but allow parents or guardians to opt out of the roster. The roster will only be made available to the parents or guardians with children enrolled in the type A daycare home or ODJFS.

OAC rule 5101:2-13-37: Medical records required to be kept by type A daycare centers shall be confidential, except they shall be available to ODJFS. .

OAC rule 5101:2-14-03: Requires that complaint investigations of Type-B family child care homes and in-home aides be kept by director of the CDJFS in that county and, with confidential information removed, released to anyone upon written request.

OAC rule 5101:2-14-11: Requires type BCII checks for type B home providers or in home aids. Record check results are not public record and shall not be made available to any individual other than the person who is the subject of the records check or his representative, ODJFS or a CDJFS.

OAC rule 5101:2-14-26: Sets out what must be in children's records at type B family day-care homes. The rule allows release of the records only to the director of the CDJFS in that county, provider or to a person who provides written authorization from the child's parent. Emergency transportation authorization and health records may be disclosed in an emergency or substitute situation of the emergency or substitute provider or of a health professional administering emergency care to the child.

OAC rule 5101:2-14-62: Sets out what type of information related to a certified child care provider cannot be released by a CDJFS This rule requires sharing of this information with ODJFS and a PCSA or law enforcement agency as needed when there is an allegation of child abuse and/or neglect.

OAC rule 5101:2-34-38: Sets out specific guidelines and parameters concerning the release of child abuse and neglect information held by PCSA's pursuant to records and investigations under Section 2151.421. **This rule is extremely important as it severely limits disclosure of this information and is very specific in delineating to whom and under what circumstances this information may be released. It must also be noted that it is a criminal offense to release this type of information in violation of the rule.**

OAC rule 5101:2-34-381: Provides guidelines for the release of information contained in the Ohio central registry of child abuse and/or neglect.

OAC rule 5101:2-39-51: Requires PCSA's to share certain PCSA information upon request by a CDJFS to: assess, plan and provide coordinated services to children families and adults receiving services from the PCSA and the CDJFS; assist the CDJFS in establishing best interest statements from minor parents who are participating in OWF; and assist OWF families already receiving PCSA services in implementing the provisions of their family assessment appraisal and self-sufficiency contract. This rule also sets out what type of abuse and neglect information may be released to the CDJFS and safeguarding of that information by the CDJFS.

OAC rule 5101:2-42-90: Allows the release by PCSA's or PCPA's of certain records to potential care givers prior to placing a child in a substitute care setting.

OAC rule 5101:2-48-19: Governs the release of adoptive home studies by PCSA's, PCPA's, or PNA's.

OAC rule 5101:2-48-20: Governs the release of birth parent and sibling identifying or non-identifying information to an adopted person or the adoptive parents.

OAC rule 5101:2-48-21: Allows a child study inventory to be shared with a public children services agency, private child placing agency, or private noncustodial agency assisting in an adoption placement of a child or serving as the adoptive family serving agency.

OAC rule 5101:2-48-22: Sets out the limited circumstances under which an adoptive family case record can be released for inspection after adoption is finalized.

OAC rule 5101:2-48-23: Governs the preservation of adoptive child case records and sets out under what circumstances the record can be released or reviewed.

OAC rule 5101:6-50-07: Allows, when a RC Chapter 119 hearing has been requested, discovery of any matter which is not privileged or confidential except in cases involving actions under RC chapters 5103 and 5104 (child day care licensing and children's residential licensing).

REFUGEE SOCIAL SERVICES

State Rules:

OAC rule 5101:1-1-03: (Nondiscrimination and Protection of the Applicants, Recipients, and Former Recipients Rights to Privacy) addresses the release of ADC, TANF, OWF and DA-cash information held by ODJFS or a CDJFS specific to an applicant, recipient or former recipient. This is an extremely important rule and should be consulted when this type of information is requested by any third party. The rule describes under what general circumstances the information can be released, exceptions to the general requirements, what is required in information releases, and procedures to follow if information is requested through court process.

OAC rule 5101:2-49-10(a)(14): Makes the providers contracting with the Refugee Resettlement program subject to confidentiality.

OAC rule 5101:2-49-24: Governs confidentiality of applicant and/or recipient specific information gathered for the refugee resettlement program. This rule appears to reflect OAC rule 5101:1-1-03.

TITLE XX

State Statutes:

RC 5101.46: Requires ODJFS to prepare a report every fiscal year related to the use of Title XX funds which will be available for public inspection.

ADULT SERVICES

State Statutes:

RC §3722.15: CDJFS employees designated by the CDJFS director to implement RC §5101.60 to RC §5101.71 must be given access and the right to copy any record of an adult care facility including residents records. In turn, the CDJFS employees cannot release the resident specific records accessed under this section without consent of the resident or a court order.

RC §3724.11: Allows the Director of Health to share reports of licensing violations concerning community alternative homes (this includes adult foster care facilities) with a government agency responsible for enforcing laws governing them.

RC §5101.61(F): All written and oral reports of suspected abused, neglected or exploited adults, and subsequent investigatory records, are not considered public records pursuant to RC §149.43. The information may only be made available to the adult who is the subject of the report upon request, to agencies authorized by the department to receive information contained in the report, and to legal counsel for the adult.

STATE HEARINGS

Federal Regulations:

7 CFR 273.15: Requires that hearing decisions related to Food Stamps be made available to the public with identifying information of the Appellant being kept confidential. This regulation also requires that the Food Stamp assistance group or its representative be given access to all documents and records to be used at the state hearing at a reasonable time prior to the state hearing as well as at the state hearing.

45 CFR 205.10: Requires that hearing decisions related to IV-A be made available to the public with identifying information of the IV-A assistance group kept confidential.

State Rules:

OAC rule 5101-22-15: ODJFS rule related to the personal systems information act (Chapter 1347). See Part II of this memorandum.

OAC rule 5101:6-5-01: Allows an Appellant requesting a state hearing and/or his/her authorized representative access to his/her case record or other relevant agency records for purposes of preparing for a state hearing. This rule also sets out the procedure for subpoenas in the state hearing process.

OAC rule 5101:6-7-01: Allows inspections of state hearing decisions subject to applicable disclosure guidelines. The implication of this rule is that an Appellant's identity is not subject to disclosure but the decision, itself (with identifying information of Appellant deleted) is available as a public record upon request.

OAC rule 5101:6-8-01: Allows inspections of administrative appeal decisions subject to applicable disclosure guidelines. The implication of this rule is that an Appellant's identity is not subject to disclosure but the decision, itself (with identifying information of Appellant deleted) is available as a public record upon request.

OAC rule 5101:6-20-16: Allows inspections of administrative disqualification decisions subject to applicable disclosure guidelines. The implication of this rule is that an Appellant's identity is not subject to disclosure but the decision, itself (with identifying information of Appellant deleted) is available as a public record upon request.

OAC rule 5101:6-50-07: Allows when RC Chapter 119 hearing has been requested, discovery of any matter which is not privileged or confidential except in cases involving actions under RC Chapters 5103 and 5104 (child daycare licensing and children's residential licensing).

OHIO'S BEST Rx PROGRAM

In December 2003, the Ohio's Best Rx Program was created by Am. Sub. H. B. 311. The Ohio's Best Rx Program is a program to provide low-income families and people age 65 and older with a method to purchase drugs at a discounted price. The program is established in Chapter 5110 of the Revised Code and will be administered by ODJFS. The Ohio's Best Rx Program will be implemented later in 2004. Am. Sub. H. B. 311 is available at http://www.legislature.state.oh.us/bills.cfm?ID=125_HB_311

RC §5110.55: Makes information confidential when transmitted for any purpose related to the Ohio best Rx program to: drug manufacturers, terminal distributors of dangerous drugs, the Ohio best Rx program administrator, ODJFS, state retirement systems, state health benefit plan or state retirement system health benefit plan, Ohio's best Rx program participants, and any other government entity or person.

RC §5110.56: Except as provided by RC §5110.57 all the following are trade secrets, are not public records for the purposes of RC §149.43 and shall not be used, released, published, or disclosed in a form that reveals a specific drug or the identity of a drug manufacturer. The statute then lists the following: the amounts determined under RC §5110.17; information disclosed in a rebate agreement or in communications related to a rebate agreement; information that the department of administrative services and state retirement systems submit to ODJFS under RC §5110.25(A)(3) and (A)(4); the elements of the computations under RC §5110.21(C) and under RC §5110.27 and any results of those computations that reveal and could be used to reveal the drug pricing or rebate information and amounts used to make the computations; and no person or government entity shall use or reveal any information specified in the statute except as required for the implementation of RC Chapter 5110.

RC §5110.57: Allows ODJFS to disclose information necessary for the implementation of RC Chapter 5110, including the Ohio's best Rx program price to participating terminal distributors or the Ohio's best Rx program administrator under RC §5110.29.

RC §5110.58: No person or government entity may solicit, disclose, receive, or use identifying information or knowingly permit the use of identifying information (information that identifies or could be used to identify an Ohio's best Rx program applicant or participant) except: ODJFS and the Ohio's best Rx program administrator may solicit, disclose, receive or use identifying information or knowingly permit the use of identifying information for a purpose directly

connected to the administration of the Ohio's best Rx program, including disclosing and knowingly permitting the use of identifying information included in a claim that a participating manufacturer audits pursuant to RC §5110.21, contacting Ohio's best Rx program applicants or participants regarding participation in the program, and notifying applicants and participants regarding participating terminal distributors; to the extent required by federal law; to an applicant or participant who is the subject of that information or the parent, spouse, guardian, or custodian of that applicant or participant. This statute allows a participating terminal distributor or the Ohio's best Rx administrator to solicit, disclose, receive, or use identifying information or knowingly permit the use of identifying information to the extent required or permitted by an agreement the distributor enters into under RC §5110.12 or a contract the administrator enters into under RC §5110.10. The statute also allows a participating manufacturer to solicit, disclose, receive, or use identifying information contained in an Ohio best Rx claim for the purpose of auditing claims pursuant to RC §5110.21(D).

RC §5110.59: ODJFS and the Ohio's best Rx program administrator shall use and preserve records regarding the Ohio best Rx's program in accordance with rules adopted under RC §5110.35. This statute applies to ODJFS's or the administrator's use and preservation of records received or generated by ODJFS, any other government entity, or any person.

MISCELLANEOUS

Federal Statutes And Regulations:

5 USC § 552 (public information) and **5 USC § 522a** (the Privacy Act of 1974) are the federal counter-parts of the Ohio public information and privacy laws.

5 USC § 552(a) Speaks to the release of Social Security numbers. This statute does not prohibit release of the Social Security numbers but creates an individual expectation of privacy by requiring that any federal, state or local government agency that requests an individual to disclose his Social Security number shall inform that individual whether that disclosure is mandatory or voluntary, under what authority the number is solicited, and what use will be made of it. Please note that public assistance, child support and children services records and portions of daycare records are not public records pursuant to other federal and state statutes. Social Security numbers would also not be public records under those laws. Social Security numbers contained in personnel files have been determined by the Ohio Supreme Court to not be public records pursuant to a Constitutional right of privacy (see page 36 of the memorandum). Requests for release of Social Security numbers in other situations (eg. provider information) should be analyzed on a case by case basis.

29 CFR § 825.500: Records and documents relating to medical certifications, recertifications or medical histories of employees or employee's family members, created for purposes of the Family Medical Leave Act (FMLA) shall be maintained as confidential medical records in separate files/records from the usual personnel files, and if the Americans With Disabilities Act (ADA) is also applicable, such records shall be maintained in conformance with ADA confidentiality requirements except: (1) Supervisors and managers may be informed regarding necessary restrictions on the work or duties of an employee necessary accommodation; (2) First aid and safety personnel may be informed (when appropriate) if the employee's physical or medical condition might require emergency treatment and (3) Government officials investigating compliance with FMLA (or other pertinent law) shall be provided relevant information upon request.

29 CFR § 1630.14(c) and (d): This is a part of the regulations related to the Americans with

Disability Act and addresses medical examination information received from employees, either voluntarily as part of an agency health program or mandatory examinations needed due to business necessity. This section requires that employers keep this information in separate medical files and keep them confidential. This regulation allows the release of this information to: supervisors and managers in relation to necessary restrictions on the work or duties of the employee and necessary accommodations; first aid and safety personnel, when appropriate, if the disability might require emergency treatment; and government officials investigating compliance with the regulation.

State Statutes:

RC §9.01: Sets out the standards for copying records for specified purposes onto different format or medium. Gives the copies the same effect at law as the original record(s).

RC § 9.312: A state agency may request additional financial information from a low bidder on a contract (in addition to a surety licensed to do business in Ohio). This additional financial information to show financial responsibility is confidential except under proper order from the court and not a public record under RC §149.43.

RC § 145.27: Sets out what information held by PERS is confidential.

RC § 149.431: Makes financial records required to be kept by any governmental entity or agency and any nonprofit corporation or association (except a charitable trust corporation organized under Chapter 1719 of the Revised Code) related to contracts or agreements with the federal government, unit of state government, or a political subdivision or taxing unity of the state, public records as defined in division (A)(1) of RC 149.431 and subject to the requirements of division (B) of that statute. The statute also states that information directly or indirectly identifying a present or former individual patient or client or his diagnosis, prognosis, or medical treatment, treatment for a mental or emotional disorder, treatment for mental retardation or a developmental disability, treatment for drug abuse or alcoholism, or counseling for personal or social problem is not a public record. It states that release of the financial records can be deferred for a reasonable amount of time if at the time a request for release is made a patient or client whose confidentiality might be violated by the release of the records is being provided confidential professional services. The statute also does not require a governmental entity or agency and any nonprofit corporation or association to keep financial records as public records related to private funds expended in relation to the performance of services pursuant to a contract or agreement.

RC § 149.433: Any record held by a public office which discloses the configuration of that office's critical systems including, but not limited to, communication, computer, electrical, mechanical, ventilation, water and plumbing systems, security codes or the infrastructure or structural configuration of the building in which a public office is located is not a public record. This statute also excludes from being a public record any records that contain information directly used for protecting or maintaining the security of a public office against attack, interference or sabotage; records assembled, prepared, or maintained by a public office to prevent, mitigate, or respond to acts of terrorism, including any portion of a record containing specific and unique vulnerability assessments or specific and unique response plans either of which is intended to prevent or mitigate acts of terrorism, and communication codes or deployment plans of law enforcement or emergency response personnel; specific intelligence information and specific investigative records shared by federal and international law enforcement agencies with state and local law enforcement and public safety agencies; and national security records classified under federal executive order and not subject to public disclosure under federal law that are shared by federal agencies, and other

records related to national security briefings to assist state and local government with domestic preparedness for acts of terrorism.

RC § 1306.23: Records that would disclose or may lead to the disclosure of records or information that would jeopardize the state's continued use or security of any computer or telecommunication devices or services associated with electronic signatures, electronic records, or electronic transactions are not public records for purposes of section 149.43 of the Revised Code.

RC § 1333.61: Defines and precludes the release of trade secrets. This may become relevant if information contained in RFP's or ITB's is requested by a third party (see #9 in Issues of Interest).

RC § 2317.023: Communication made in the course of a mediation wherein the mediator is appointed in writing by a court, administrative agency or other public body is confidential and shall not be disclosed in a civil or administrative proceeding except: when all parties to the mediation and the mediator consent to the disclosure; when disclosure is by a person other than the mediator when all parties consent to the disclosure; disclosure of a mediation communication is permissible if the mediation communication was made in furtherance of the commission of a criminal offense or as part of a plan to commit an offense; and when disclosure of a mediation communication is ordered by a court after a hearing wherein the court determines that disclosure does not circumvent the rules of evidence. The statute does not prevent or inhibit the disclosure, discovery, or admission into evidence of a statement, document, or other matter that is a mediation communication but that, prior to its use in a mediation proceeding, was subject to discovery or admission under law or a rule of evidence or was subject to disclosure as a public record pursuant to section 149.43 of the Revised Code.

RC § 3701.041: Records of the identity, diagnosis, prognosis, or treatment of any person that are maintained in the connection with the employee assistance program (EAP) are not public records under Section 149.43 and shall be disclosed without written permission of the subject of the record **only** to medical personnel to the extent necessary to meet a bona fide medical emergency or to qualified personnel for the purpose of conducting scientific research, management audits, financial audits, or program evaluation, but the personnel shall not directly or indirectly identify any person who is the subject of the record in any report of the research, audit, or evaluation or in any other manner.

RC § 3701.74: Provides the subject of medical records or their representatives the right to access their medical records from a hospital or health care provider. Allows the subject of the record to initiate a civil action to get medical records denied to the subject of the medical record and sets out costs that may be assessed by a hospital or health care provider who releases the record.

RC § 4701.19: Makes statements, records, schedules, working papers, and memoranda made by certified public accountant or public accountant incident to or in the course of performing an audit of a public office or private entity, except report submitted by the accountant to the client, not a public record under RC §149.43.

IV. HIPAA: Health Insurance Portability and Accountability Act

HIPAA is a federal law addressing many issues in the area of medical services. One portion of the Act addresses the privacy of certain medical, eligibility and claims information (protected health information). The final privacy regulations for HIPAA were implemented by ODJFS prior to the April 14, 2003 federally required implementation date. ODJFS is considered a "covered entity" as a Health Plan for the Medicaid program, the Disability Medical Assistance (DMA) program, the Children Health Insurance Programs (CHIP) and the Refugee Medical Program (RMP). Essentially, HIPAA restricts the release of Protected Health Information (PHI) possessed by covered entities including ODJFS to third parties and requires covered entities under most circumstances to release PHI to the subject of the PHI or his/her guardian upon request.

HIPAA assesses criminal and civil penalties for failure to protect PHI from improper release and civil penalties for failure to release PHI to the subject of the PHI or guardian of the subject of the PHI. HIPAA also precludes release of PHI to third parties without an authorization signed by the subject or the subject's guardian unless release is allowed pursuant to exceptions set out in the regulations. The regulations set out an extensive procedure for documentation of certain types of release requests and responses; requires that privacy notices be provided to all participants in each health plan; require a privacy official be designated; require that a complaint, accounting for release and a restriction request procedure be set up by the Health Plan; and requires training for all employees of the Health Plan in relation to privacy policies.

By statute and rule, ODJFS is requiring each CDJFS to comply with certain portions of the HIPAA privacy requirements since these agencies have access to eligibility information (PHI) for the medical programs cited above. It should be noted that HIPAA is preempted by any federal or state law that has more restrictive privacy requirements. The Medicaid federal regulations and state law are more restrictive towards release of Medicaid PHI than HIPAA. ODJFS has brought CHIPS I and II, DMA and RMP under the same restrictions as Medicaid through a change in RC §5101.27 and the enactment of RC §5101.271.

The federal government also published the final HIPAA security regulations. These regulations apply only to the electronic transmission of PHI but also affect privacy. Implementation of these regulations by ODJFS will affect several of ODJFS's statewide automated systems. Deadline for implementation of the HIPAA security regulations by ODJFS is April 21, 2005.

For a summary of all the HIPAA Privacy regulations and links to the actual regulations you can go to: <http://hipaa.ohio.gov/privacyrule/guideindex.htm>

IV. PENALTIES FOR WRONGFUL WITHHOLDING OR DISCLOSURE

In many cases, state and federal laws set out explicit penalties for violation of specific duties with respect to confidentiality. The following is a list of federal and state laws that impose liability for violating various confidentiality laws or public records laws.

Federal Statutes And Regulations:

It is likely that some of the following penalties apply to federal government agencies and employees only, See 1981 Op. Atty. Gen. No. 81-051; however, should a state agency which administers programs (such as ODJFS) violate both state and federal confidentiality laws, it is not unlikely that some federal penalty may attach.

5 USC § 552a(g)(1): A person may bring a civil action for damages against any agency of the U.S. Government which violates the provisions of the Federal Privacy Act pertaining to release of information to the person who is the subject of the record, or failing to maintain an accurate record. Criminal penalties may be assessed to a person who intentionally discloses confidential information. The penalty is a fine of not more than five thousand dollars (\$5,000).

5 USC § 552a(B)(3)(A): A complainant may seek an injunction to enjoin an agency from withholding agency records and to order the production of any records improperly withheld. The court may assess the government reasonable attorney fees and costs.

5 USC § 552(4)(B): A complainant may seek an injunction to enjoin an agency from withholding agency records and to order the production of any records improperly withheld. The court may assess the government reasonable attorney fees and costs.

42 USC § 1320d-5: Imposes up to a \$100 penalty for each HIPAA violation, except that the total amount imposed per year of an identical requirement or prohibition during a calendar year may not exceed \$25,000. Penalty can be waived if Secretary finds that failure to comply was not due to wilful neglect and to the extent that the payment of such penalty would be excessive relative to the compliance failure involved.

42 USC § 1320d-6: A person who knowingly and in violation of HIPAA uses or causes to be used a unique health identifier; obtains individually identifiable health information relating to an individual or discloses individually identifiable health information to another person can face up to a \$50,000 fine or imprisoned for up to one year or both. The fine goes to \$100,000 and five years in jail if done with false pretenses. If it is done with intent to sell, transfer, or use the information for commercial advantage, personal gain, or malicious harm up to \$250,000 and up to 10 years in jail.

42 USC § 5106a(c)(4)(B)(ii): Requires each state to establish civil sanctions for violation of confidentiality by members and staff of child abuse and neglect, child fatalities and foster care citizen review groups.

State Statutes And Regulations:

RC § 149.43(C): A person aggrieved by a violation of Division (B) of this Section by a

failure to promptly prepare and make records available for inspection at all reasonable times during business hours; upon request, make copies available at cost within a reasonable time; or aggrieved by a governmental unit's failure to maintain public records in such a manner that they can be made available for inspection at all reasonable times during regular business hours; may commence a mandamus action to compel compliance, and receive reasonable attorneys fees.

RC § 307.629(C): Whoever permits or encourages the unauthorized dissemination of any information, document, or report presented to a child fatality review board, all statements made by review board members during meetings of the review board, and all work products of the review board, other than the report prepared pursuant to RC §307.626 is guilty of a misdemeanor of the second degree.

RC § 1347.10: A person who is harmed by the use of personal information that relates to him or her may recover damages in a civil action from the person who intentionally maintains inaccurate, irrelevant, incomplete or untimely information; supplies false information; intentionally uses or discloses the personal information in a manner prohibited by law; or denies to the subject of the system the right to inspect and dispute the information at a time when inspection or correction might have prevented harm. A person who is harmed may also seek an injunction to prevent the harm, either in his/her own behalf or through the attorney general or any prosecuting attorney.

This section seems to impose personal liability on public employees who intentionally violate RC Chapter 1347. In addition, a case decided in 1983 indicated that negligent release of confidential information by a state agency resulting in damages, is the basis for a claim under Section 1347.10. This is true notwithstanding the fact that the statute requires intent. Petrie v. Forest Hills School Dist. Bd. of Education, 5. O App. 3d 115, 5 OBR 231, 449 NE2d 786 (1983).

RC § 1347.99: Public officials, public employees, or other persons who maintain or are employed by persons who maintain personal information systems for a state or local agency who purposely refuse to: (1) inform the person who is asked to supply personal information whether the person is required to or may refuse to supply the information; (2) assure that the information is accurate, relevant, timely, and complete; (3) take reasonable precautions to protect the information from unauthorized use; (4) collect, maintain and use only necessary information; (5) inform a person supplying the other agencies or organizations that have access to information in the system; (6) provide the subject of the system access to her own information subject to certain exceptions; (7) withhold information when a physician, psychiatrist or psychologist determines that disclosure would have an adverse impact on the subject of the information; (8) or investigate any disputed information and delete information found to be inaccurate, is guilty of a minor misdemeanor.

RC § 2151.99: Whoever violates the non-disclosure provisions of RC §2151.421, which prohibits the unauthorized disclosure of the contents of reports of child abuse or neglect, is guilty of a misdemeanor of the fourth degree. This statute also makes improper retention or use of fingerprints or photographs of children (out of compliance with RC §2151.313) a fourth degree misdemeanor. A misdemeanor of the fourth degree is punishable by fine of not more than two hundred fifty dollars (\$250) or imprisonment for not more than thirty (30) days, or both. (RC §2929.21). This statute also provides for a penalty (minor misdemeanor) to any entity subject to RC § 2151.62 who fails to provide to foster caregivers certain information required by the statute.

RC § 2921.14: Knowingly making or causing another person to make a false report of child abuse and/or neglect to a PCSA (pursuant to RC § 2151.421(b)) is a first degree misdemeanor.

RC § 3107.43: Makes unauthorized release of information regarding the name by birth of an adopted person or the identity of an adopted person's biological parents or biological siblings a minor misdemeanor.

RC § 3121.99: Whoever improperly provides financial information obtained from a financial institution pursuant to an account information access agreement for child support purposes is subject to six months in jail or a five hundred dollar fine or both. This statute also provides a fifty dollar fine for a first offense of failing to report to a CSEA certain information (eg. new employment, change in income, name of new employer, business address of new employer, telephone number of new employer, change of account wherein deduction is coming, change of personal address, change of name, phone number, etc), one hundred dollars for a second offense and no more than five hundred dollars for subsequent offenses. The statute also provides for a five hundred dollar fine for any employer terminating, imposing disciplinary action or refusing to hire an individual because the employer receives a notice to withhold wages for child support purposes.

RC § 3125.99: Whoever violates RC § 3125.50 shall be fined not more than \$500 or imprisoned not more than six months or both.

RC § 4141.22: Sets a penalty for individuals who disclose employment services information not in compliance with RC Chapter 4141. The penalty is disqualification from holding any appointment or employment with the ODJFS, a county job and family services agency or a workforce development agency.

RC § 4141.99: Whoever violates the disclosure restrictions set out in RC § 4141.22 is subject to a fine of not less than \$100 nor more than \$1,000 or imprisonment of not more than one year, or both.

RC §5101.181 and RC §5101.182: State that the director of Job and Family Services, district director of Job and Family Services, county director of job and family services, county prosecutors, attorney general, auditors of state or any agent or employee of those officials having access to information or documents received as a result of a social security number match of public assistance recipients and Ohio income tax records, workers compensation records, state retirement records, and state personal records may not divulge information from these matches except to determine overpayments, audits, investigations, prosecution, or in accordance with a proper judicial order. Any person violating these sections shall be disqualified from acting as an agent or employee or in any other capacity under appointment or employment of any state or county board, commission, or agency.

RC § 5101.28(D): Precludes civil liability of ODJFS and CDJFS for damages when either agency provides information to law enforcement agencies pursuant to division A, B, and C of RC §5101.28.

RC § 5101.99: Whoever violates the provisions of RC § 5101.27(A) (release of public assistance information without authorization under the statute) or RC § 5101.61(A) is guilty of a first degree misdemeanor.

RC §5110.99: Whoever violates RC §5110.58(B) (Ohio's best Rx confidentiality requirements) is guilty of a first degree misdemeanor.

OAC rule 4141-43-01: Permits the director of ODJFS to prohibit future exchange or disclosure of information to any employee or employees of a one stop system partner, state

department, governmental agency, or other requesting party if the director finds that wage, claim, employment and training, or employer information in the custody of the employee or employees is redisclosed without authorization.

VI. HIPAA: Health Insurance Portability and Accountability Act

HIPAA is a federal law addressing many issues in the area of medical services. One portion of the Act addresses the privacy of certain medical, eligibility and claims information (protected health information). The final privacy regulations for HIPAA were implemented by ODJFS prior to the April 14, 2003 federally required implementation date. ODJFS is considered a "covered entity" as a Health Plan for the Medicaid program, the Disability Medical Assistance (DMA) program, the Children Health Insurance Programs (CHIP) and the Refugee Medical Program (RMP). Essentially, HIPAA restricts the release of Protected Health Information (PHI) possessed by covered entities including ODJFS to third parties and requires covered entities under most circumstances to release PHI to the subject of the PHI or his/her guardian upon request.

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The federal government also published the final HIPAA security regulations. These regulations apply only to the electronic transmission of PHI but also affect privacy. Implementation of these regulations by ODJFS will affect several of ODJFS's statewide automated systems. Deadline for implementation of the HIPAA security regulations by ODJFS is April 21, 2005.

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VI. FREQUENTLY ASKED QUESTIONS

(1) May County Commissioners Have Access to Client Case Files and Other Confidential Information at the CDJFS ?

While the CDJFS and its director are under the control and direction of Board of County Commissioners, neither the CDJFS nor its director is free to follow directives of the Board of County Commissioners if such directives are in conflict with ODJFS rules or other applicable law. Furthermore, the Board of County Commissioners is not involved in the day-to-day operation of the CDJFS which is vested in the CDJFS director (1983 Op. Atty. Gen. No. 83-023). The director of the CDJFS and the CDJFS employees may share all public assistance applicant, recipient, and former recipient records so long as a access to these records are for the purpose of administration of the public assistance programs. Since the Board of County Commissioners, pursuant to Section 329.01 of the Revised Code, is responsible to appoint the CDJFS director but delegates authority for running the CDJFS to the director, it is the opinion of this office that the Board of County Commissioners may only access public assistance applicant, recipient or former recipient information if release is authorized pursuant to RC §5101.26, RC §5101.27, RC §5101.28 or RC §5101.30.

(2) What Protections Exist For Data Instruments ?

Records as defined in RC §149.011 include records in any form. Computer information that can be downloaded, magnetic tapes, micro-fiche, video tape or other types of data collection instruments are considered records for the purpose of RC §149.43. However, the Ohio Supreme Court case of Scanlon v. Deters, 45 Ohio St. 3d. 376 indicates that information held within a computer system or systems which can be accessed only through the creation of a new computer program are not records under RC §149.011 or a personal information system under RC Chapter 1347. This means that if the information requested cannot be downloaded, it is not a record under RC §149.011.

This guideline should not be confused with a situation wherein information is requested which can be downloaded but information in the downloaded data contained some information that is confidential and cannot be released. Public records case law requires that when there is information contained in a record which is public record under RC §149.43 but also within that record there is some information which is not public record pursuant to RC §149.43 or some other state or federal law, the governmental agency with custody of the record must edit out (redact) the information which is not a public record and release the information which is public record. In this situation, sometimes the only practical method to redact the non-public record information is to create a computer program that redacts the non-public record information. Although there does not appear to be any case law regarding this issue yet, the prevailing opinion appears to be that the governmental agency that has custody of the record must generate a computer program to extract the non-public record information from a computer data base despite the fact that the request for information cannot be met through simply downloading the information (Scanlon v. Deters). The thinking behind this view is that RC 149.43(B) requires governmental units to maintain public records in a manner in which they can be made available for inspection in accordance with RC §149.43. Therefore, it is reasoned that if the agency is in violation of RC, it cannot assert the Scanlon finding to avoid releasing the requested information.

To determine if data from data collection instruments must be released upon request, the following process should be utilized. First, determine if a new program must be written to extract the requested data. If not, then determine whether the information is public record and, if so, release it. If a new program must be written to extract the entire information being requested, it is not a record and need not be released (Scanlon v. Deters). If the records in the data base can be downloaded but the downloaded material contains some information that is confidential and some that is not, the agency must redact the non-public record information by hand or by a computer program which will extract it.

(3) May The Subjects of Child Abuse And Neglect Investigatory Records, Maintained by PCSA's Pursuant to RC §2151.421, Have Access to These Records Under RC §1347.08 ?

An Ohio Supreme Court Decision (State, ex rel. Renfro v Cuyahoga Cty. Dept. of Human Serv. 54 Ohio St. 3d 25 (1990)) determined that records of an investigation of abuse and neglect held by a PCSA which was completed pursuant to RC §2151.421 was not accessible under RC §149.43, RC §1347.08, or RC §5153.17 if the person or persons seeking access to the information do not need the information in order to support a right to a fair trial or release of the record was not authorized by OAC rule 5101:2-34-38.

The court stated that RC §2151.421(l) (now h) made records of investigations and reports confidential and precluded unauthorized dissemination of the records. The court concluded that this section "clearly" removed child abuse and neglect investigatory reports compiled under RC §2151.421 from the mandatory disclosure provision of RC §149.43 (exception concerning state laws which preclude release of information) and the PCSA is obligated to follow OAC rule 5101:2-34-38 in determining when release of this information is authorized.

The court looked at RC Chapter 1347 and determined that this chapter does not apply to investigations and reports compiled by PCSA's pursuant to RC §2151.421. This conclusion was reached due to their finding that these personal information system records were exempt under RC §1347.04(A)(1)(e) which exempts personal information systems that "...are comprised of investigatory material compiled for law enforcement purposes by agencies..." but are not agencies whose principal function relates to the enforcement of criminal laws, criminal courts, prosecutors, correction, probation, parole or pardon authority. This portion of the decision specifically put the court in accord with a 1989 Ohio Atty. Gen. Op. No. 89-084.

The court then looked at RC §5153.17 and again concluded that this section requires the PCSA to keep records confidential and reiterates that, absent involvement of a person's right to a fair trial, RC §5153.17 allows PCSA's to refuse release of the information.

(4) Are ODJFS Employee Personnel Files Held by ODJFS Subject to Inspection by The General Public Upon Request ?

To answer this question RC §149.43 must be analyzed as well as an Ohio Supreme Court decision. In State ex rel. Fant v. Enright (1993) the court looked at RC §149.43 and acknowledged that all public records must be released upon request and that personnel files do not fit within any of the exceptions contained in the statute. However, the court looked at the definition of record contained in RC §149.011(G) which states that a "record" is something that

is "created or received by or coming under the jurisdiction of any public office...which serves to document the organization, functions, policies, decisions, procedures, operations or other activities of the office." The court then stated; "(T)o the extent that any item contained in a personnel file is not a "record" i.e., does not serve to document the organization, etc., of the public office, it is not a public record and need not be disclosed." The court then goes on to say; "To the extent that an item is not a public record and is "personal information" as defined in RC §1347.01(E), a public office "would be under an affirmative duty, pursuant to RC §1347.05(G) to prevent disclosure." The court then ordered that the requestor in this case be allowed to examine the personnel file in question except for any items of "personal information" which were to be redacted, "...but only if those items are not "public records." This decision has muddied the waters on the personnel files issue. It appears that records of personnel actions and specific forms would be considered records and public records under the court's analysis as they serve to document the organization, functions, policies, decisions, procedures, operations, or other activities of ODJFS. However, the decision requires that other information contained in the personnel file be analyzed separately to determine if the information meets the definition or is a protected piece of personal information which cannot be disseminated. Another Ohio Supreme Court case (State ex rel. Dispatch Printing Co. v. Wells (1985), 18 Ohio St. 3d 382) states that the court will be the final arbiter as to whether the personnel information must be released under Section 149.43 of the Revised Code. A new case has muddied the waters further (State ex. rel McCleary v. Roberts (2000)), see Question #10 of this section.

Another case from the Ohio Supreme Court speaks to the issue of Social Security numbers contained in personnel files. This case (State ex. rel. Beacon Journal v. City of Akron (1994)) finds that RC §149.43 does not mandate that governmental agencies disclose employee Social Security numbers. The court found that disclosure of the Social Security numbers would violate the federal constitutional right of privacy (federal law which precludes release). The court used a balancing test of individual's interest in avoiding disclosure against the government's interest in disclosing the information and found that the individual's interest prevailed in connection with Social Security numbers. This case may only apply to Social Security numbers contained in personnel files (so far) or may be narrowly construed in favor of releasing other types of information from personnel records. The court, in a subsequent case (Thomas v. Ohio State University see next paragraph) ruled that the government's interest in disclosure prevailed when the balancing test was argued in relation to certain personal information of Ohio State University researchers when requested by animal rights activities.

The November 1994 decision Thomas v. Ohio State University, 71 Ohio St. 3d. 245 may have provided a little more guidance regarding what information in personnel files are not records under RC §149.011(G). This case concerned the efforts of an animal rights organization to secure information on animal researchers from Ohio State University. The plaintiffs requested addresses as well as other information from the University. The court found that much of what was requested was public record. However, the court ruled that release of the researcher's business addresses met the plaintiff's request. Although the court did not specifically exclude home addresses as public records in personnel files, it could certainly be argued that the Thomas case combined with the Fant case could stand for the proposition that home addresses in personnel files are not records under RC §149.011(G). It must be noted that it will take further court interpretation of the relevant cases to receive conclusive guidance as to what must be released and what does not have to be released. The Department of Administrative Services has taken the position with the support of the Attorney General's Office that home addresses for public employees who are not covered by specific statutory exemptions (eg PCSA caseworkers and law enforcement personnel) are public record. When in doubt contact the Office of Legal Services.

(5) Does the Death of a Person End the Confidentiality of Information Held by ODJFS, CDJFS, or PCSA ?

The Ohio Attorney General, in a 1990 opinion (OAG 90-007) found that "(W)here state law prohibits the release of information in a record kept by ODJFS, a county department of Job and Family Services or a children services board, such prohibition remains effective despite the death of the subject of the record. HIPAA regulations (see question #12) also state that protected health information subject to HIPAA continues to be subject to HIPAA privacy regulations after a person is deceased. The HIPAA regulations set out under what circumstances this information may be shared.

(6) Must Public Assistance Records Be Released to Law Enforcement Agencies When Requested ?

The answer to this question is dependent upon which public assistance program's records are being requested and for what reason.

RC §5101.26 defines law enforcement agency to include the State Highway Patrol, an agency that employs peace officers as defined in RC §109.71, the Adult Parole Authority, a County Department of Probation, a Prosecuting Attorney, the Attorney General, similar agencies, and Postal Inspectors including the peace officers and other law enforcement officers employed by the agency.

RC §5101.27 allows law enforcement agencies to access public assistance applicant, recipient or former recipient information from any public assistance program if the law enforcement agency is accessing the information for the purpose of any investigation, prosecution, or criminal or civil proceeding directly related to the administration of a public assistance program.

RC §5101.28 allows access to OWF, PRC and non-medical DA, applicant, recipient or former recipient information for the purpose of investigation, prosecutions, and criminal or civil proceedings that are within the scope of the law enforcement agencies' duties. However, ODJFS or a CDJFS releasing information under this section of the Revised Code cannot be held liable in a civil action for any injuries, death or loss to a person or property that allegedly arises from the release of the information.

Law enforcement agencies may not access applicant, recipient or former recipient Medicaid, Children Health Insurance program, DA medical or refugee medical program information unless it is received for the purpose of any investigation directly related to that program.

Law enforcement agencies may access applicant, recipient or former recipient food stamp information if needed for the purpose of any investigation directly related to the food stamp program. Law enforcement agencies may access the address, social security number, and photograph (if available) of a food stamp recipient if the law enforcement agency furnishes the recipient's name and notifies the CDJFS that the recipient is fleeing to avoid prosecution or custody or confinement after conviction for a felony (high misdemeanor in New Jersey) or violation of a condition of probation or parole imposed under state or federal law so long as it is within the official duty of the law enforcement agency to apprehend the recipient.

(7) Does The Format of a Record Have Any Effect Upon Whether It Is a Public Record ?

For the purposes of public record law (RC §149.43) RC §149.011(G) defines a record as

..any document, devise, or item regardless of physical form or characteristic, created or received 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.

This is an extremely broad definition and there has been little litigation clarifying whether certain types of records held by state agencies or political subdivisions are records under RC §149.011. ODJFS' position is that all memoranda, letters, and other working papers that serve to document the functions of ODJFS are records for the purpose of public record law. Correspondence with the other individuals at ODJFS or outside of ODJFS when a person is acting in his/her capacity as an ODJFS employee should be considered records. It does not matter whether the memoranda or correspondence is handwritten, typed or printed. As long as it documents the organization, functions, policies, decisions, procedures, operations or other activities of the office, it is a record for the purpose of public record law.

Previously, it was unclear whether draft materials and personal notes were considered public record. There was no case law on the subject and treatment of the materials were dependent upon each agency's interpretation of the definition of records (RC §149.011). However, a 1995 case (State ex. rel. Dist. 1199 v. Gulyassy (1995), 107 Ohio App. 3d. 729) from the Franklin County Court of Appeals has shed some light on the subject. This is not an Ohio Supreme Court case but is significant enough authority to be the current prevailing and controlling view. The plaintiffs were several unions that have collective bargaining agreements with the state. The unions requested all drafts of proposed changes to RC Chapter 4117 which had either been prepared by the Office of Collective Bargaining in the Department of Administrative Services (OCB), or had been prepared for OCB by other state agencies, by other entities or by other individuals. The records requested were not related to issues being collectively bargained but the records requested included drafts of documents which were never implemented or put into final form for distribution. The court found that the records were "records" under RC §149.011 and were governed for release by RC 149.43. The court rejected an argument that the drafts should be exempt due to a "deliberative privilege" since the legislature had not acknowledged "deliberative privilege" as an exemption in state law. It should be noted that any records destroyed pursuant to properly promulgated agency retention schedules are not available when requested through a public records request.

This case is also important in that it set up a distinction as to whether personal notes are records for the purpose of RC §149.43. The court stated that personal notes are not considered records for RC §149.43 purposes unless the notes are shared with other individuals in the agency or outside the agency for the purpose of affecting policy.

Messages sent on E-mail may be records under the public records law depending on what information is being sent. If the information sent documents the organization, functions, policies, decisions, procedures, operations, or other activities of ODJFS, it is a record and public records requests for records would include E-mail messages if they are public records. The case of State ex. rel. v Sheriff's Department , 82 Ohio St. 3d 37 ruled that racist e-mail messages sent by employees to another employee were not public records as they did not

document the organization, functions, policies, decisions, procedures, or other activities of the public agency. It should be noted that ODJFS is developing a policy regarding E-mail in terms of retention (when the E-mail may be deleted without keeping a hard copy of it or downloading it to disk so it would continue to be available for public records purposes).

(8) How Is Information Obtained in the Procurement Process Handled When Requested by a Third Party Pursuant to RC §149.43?

Some areas that are involved in the contracting process have run into situations wherein certain bidders for contracts provide information to ODJFS in response to a Request for Proposal (RFP) or an Invitation to Bid (ITB). Once RFP or ITB information have been accepted by ODJFS pursuant to the contracting process, requests for the information from other companies have been received by ODJFS. These requests have to be treated as any other request for records (analyze RC §149.43 as to how it applies). Generally, the information contained in the RFP or ITB are not excluded by any of the specific exemptions set out in RC §149.43. As of the date of issuance of this memorandum, we are not aware of any specific federal or state statute which, specifically, precludes the release of RFP or ITB records received by ODJFS. However, RC §1333.61 precludes the release of trade secrets. The statute sets out a two pronged test to determine if information is or is not considered a trade secret. To determine if RFP or ITB information contain trade secrets, ODJFS must rely on the company that submitted the information.

A suggested procedure when RFP or ITB information is requested by a third party is as follows. First, contact the company whose information is being requested, inform it of the request and ask if any of the information received is considered by the company to be trade secrets. If the company says no, then release the records pursuant to RC §149.43. If the company states that some of the information is considered a trade secret, have the company provide ODJFS a letter identifying the information it considers to be trade secret and how the information meets the two pronged test set out in RC §1333.61. If the company provides this letter to ODJFS, the letter and the information requested pursuant to RC §149.43 should be provided to the Office of Legal Services for review and a determination whether the explanation meets the two pronged test (If it is a trade secret and is released, ODJFS can be sued for releasing the information under RC §1333.61. If it is not a trade secret and ODJFS does not release it, ODJFS can be sued in mandamus for failure to release public records pursuant to RC §149.43). Once the Office of Legal Services makes its findings then the records will be handled accordingly.

The Office of Legal Services will be happy to work with any area during any part of this process. If anyone is aware or becomes aware of any state or federal legislation passed which relates to the procurement process addressing the issues of release of procurement records, please contact the ODJFS Office of Legal Services.

(9) Must Public Records be Mailed to a Requestor Upon the Requestor's Request ?

RC §149.43(B)(3) requires that public agencies provide public records to a requestor by mail, if so requested. The public agency may require payment of the cost of postage and other supplies used in the mailing prior to mailing the records. A public agency may adopt a policy for providing public records through the mail. The policy may limit the number of records mailed out to ten per month unless the requestor certifies to the public office in writing that the requestor does not intend to use or forward the requested records, or the information contained in the

requested records for commercial purposes. Commercial purposes does not include reporting or gathering news, reporting or gathering information to assist citizen oversight or understanding of the operation or activities of government, or nonprofit educational research.

If the requestor is incarcerated pursuant to a criminal conviction or a juvenile adjudication, records concerning a criminal investigation or prosecution or concerning what would be a criminal investigation or prosecution if the subject was an adult, need not be released 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 RC §149.43 and the judge who imposed the sentence 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 person.

(10) What effect does the Supreme Court decision in *State ex rel. McCleary v. Roberts* have upon release of information ?

State ex rel McCleary v. Roberts, 88 Ohio st. 3d 365 (May 12, 2000) is a nearly unanimous Ohio Supreme Court Case which appears to significantly change the way that the Supreme Court had previously analyzed public records law. We anticipate that it will take subsequent litigation to fully clarify the implications of this decision.

The facts of this case are that the City of Columbus implemented a photo identification program for its Recreation and Parks Department (Department) primarily to combat increased incidence of violent behavior and vandalism at City swimming pools. The Department required parents of children who used the city swimming pools to provide personal information regarding their children including the children's names, home addresses, family information, emergency contact information, and medical history information. In exchange, the children received photo ID's allowing access to the city pools. It appears that the program was effective and achieved the desired effect. In November of 1996 a community activist made a public records request for the Department's data base containing this information. The city refused to release the information and the requestor filed a mandamus action in common pleas court to force the city to comply. The common pleas court ruled that the information requested was not public record pursuant to RC §149.43. The requestor appealed the decision to the Court of Appeals and that court ordered the trial court to order the city to release the requested information. The city appealed to the Ohio Supreme Court which reversed the Court of Appeals.

The court found that the requested information was under the control of a public office but ruled that the information requested was not a "record" pursuant to the definition contained in RC §149.011(G). The Ohio Supreme Court ruled that the information at issue, "Standing alone, ...i.e., names of children, home addresses, names of parents and guardians, and medical information, does nothing to document any aspect of the City's Recreation and Parks Department." The court went further to support a U.S. Supreme Court statement that "**** a third party's request for law enforcement records or information about a private citizen can reasonably be expected to invade that citizen's privacy ***." The court also supported language from the U.S. Supreme Court decision which stated: "(I)n this case and presumably in the typical case in which one private citizen is seeking information about another the requestor does not intend to discover anything about the conduct of the agency that has possession of the requested records. Indeed response to this request would not shed any light on the conduct of any Government agency or official."

The Ohio Supreme Court found that the existence of the Department's data base was well documented and there was no secret as to why it was initiated, how it operated, and the

effect it had in making the city swimming pools safer in their operation. The court stated that it “...fails to see how release of the requested information to appellee, or anyone else, would provide any further insight into the operation of the Department’s photo identification program than that already available.” The court then attempted to distinguish personal information related to the personnel files of public employees and information in files on private citizens created by the government. The court then found that the city data base information was not a record as defined under RC §149.011(G) and stated: “(W)e, therefore, find that personal information of private citizens, obtained by a “public office,” reduced to writing and placed in record form and used by the public office in implementing some lawful, regulatory policy is not a “public record” as contemplated by R.C. §149.43.”

This is an interesting interpretation of the public records law for two reasons. First, the court appears to require that a public agency receiving a public records request look at the intent of the requestor in requesting the information. This is a major departure from previous rulings which precluded questioning of the reasons for the request. Second, the ruling appears to exempt private citizen information compiled for regulatory purposes from release as a public record. ODJFS had previously treated records containing foster care parent information compiled by ODJFS and other licensing information concerning employees at daycare centers as public record information in the past. It is now unclear whether this information remains public record and whether ODJFS is under some type of duty not to release this information. The case also cites a previous Ohio Supreme Court decision (see question #4 of this section which cites State ex. rel. Fant v. Enright) to show that certain personal information is not a record under RC §149.011(G) and must be protected but then attempts to distinguish information contained in public employee personnel files from private citizens information held by public offices. What is ironic about this holding is that the previous Ohio Supreme Court case cited by this court related to a request for information contained in personnel files of a public employee. Thus, how this ruling relates to personnel information is not clear and subsequent court decisions may be needed to clarify this ruling.

The court goes on in the decision to state that even if the data base information met the definition of record pursuant to RC §149.011(G), it would not be considered a public record under RC §149.43. The court found that the city met its burden in showing that the information requested was exempted from disclosure due to a U.S. Constitution right of privacy. The court ruled that the release of this 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 Appellee. Furthermore, any perceived threat that would likely follow the release of such information, no matter how attenuated, cannot be discounted.” The court stated that there was no evidence presented that suggested that the requestor was any threat to the children but found that due to technological advancements, including the Internet, this information could be transmitted to millions of people and some of those people could pose a threat to the children. Based upon the above reasoning, the court reversed the appellate court’s decision.

This language is quite puzzling as any public records release of personal information can be placed on the Internet and put any individual at risk. Also, couldn’t this same risk be inherent when personal information is released to a media outlet who can broadcast or circulate this information to a wide audience? Again, the question arises whether personal information in ODJFS personnel files (e.g. names of employees’ children, home phone, spouse names, home address, etc.) retain this constitutional right to privacy and can be redacted when there is a public records request.

Again, this Ohio Supreme Court ruling is not clear on all points. However, it appears that release of children’s names held by ODJFS may be precluded from release pursuant to a public

records request under the ruling. Consultation with the Office of Legal Services is crucial when any public records requests are made regarding children or private citizens who are regulated by ODJFS (e.g., employees at daycare centers, foster parent names) or non-work related information contained in personnel files of ODJFS employees. To date, there have been no further reported decisions citing this case so its precedential affect appears to be minimal.



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