

Public Records And Confidentiality Laws

November 2022

CONTENTS

		<u>PAGE</u>
I.	OHIO'S PUBLIC RECORDS ACT	2
	A. Definition of a "Record"	
	B. Application of Public Records Act to Private Entities	
	C. Inspection, Copying and Release of Public Records	
	D. Denying a Public Records Request & Potential Consequences for	
	Improper Withholding of Public Records	
	E. Exemptions to Public Records Act	
II.	OHIO'S PERSONAL INFORMATION SYSTEMS ACT	12
	Ohio Revised Code Chapter 1347 and its Relationship to Public Records	Act
	State Employee Access to Confidential Personal Information	
III.	FEDERAL AND STATE CONFIDENTIALITY LAWS	16
	A. General	16
	1. Tax Return Information	
	2. Social Security Numbers	
	3. Voter Registration	
	4. Audits	
	B. Food Assistance/Supplemental Nutrition Assistance Program	2 0
	C. Temporary Assistance for Needy Families (TANF)/Cash Assistance (OWF & PRC)	23
	D. Medical	27
	1. Medicaid	
	2. HIPAA	
	E. Child Welfare	35
	F. Adult Services	43
	G. Child Day Care	43
	H. Child Support	45
	I. Unemployment Insurance/Unemployment Compensation	50
	J. Workforce Development	53
	1. Workforce Innovation and Opportunity Act (WIOA)	
	2. Labor Market Information (LMI)	
	3. Employment Services (Wagner-Peyser)	
	K. State Hearings	56
	L. Miscellaneous	57
IV.	PENALTIES	59
	Civil and Criminal Penalties: Wrongful Withholding / Disclosure	
APP	ENDIX A & B Internal Policy & Procedure 8101 & 8102	

I. THE OHIO PUBLIC RECORDS ACT

A. Definition of "Record"

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."

State ex rel. Dispatch Printing Co. vs. Johnson 106 Ohio St. 3d 160 (2005), held that home addresses of state employees are not records under RC §149.011(G) and RC §149.43, because they do not document the organization, functions, policies, decisions, procedures, operations, or other activities of the office.

<u>State ex rel. Cranford vs. City of Cleveland</u>, 2004 Ohio 633 (affirmed by 103 Ohio St. 3d 196), held that personal notes are not records, if kept solely for personal convenience. Case Facts: Notes were taken by an employee during a dismissal hearing and were the employee's personal notes. Therefore, the court held that the city and employees had no duty to comply with a request to provide the notes.

B. Application of Public Records Act to Private Entities

<u>RC §149.43</u> 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 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 RC §149.011(G)).

<u>Oriana House vs. Ohio Auditor of State</u>, 110 Ohio St. 3d 456 (10/04/06), Ohio Supreme Court ruled that private entities are not subject to public records laws unless there is clear and convincing evidence they are the "functional equivalent of a public office. "A private business does not open its records to public scrutiny merely by performing services on behalf of state or municipal government."

<u>State ex rel. Repository vs. Nova Behavioral Health</u>, 112 Ohio St. 3d 338, private community mental health agency contracting with county MH Board was determined not to be functional equivalent of a public office, and therefore not subject to the Public Records Act.

<u>State ex rel. Dann vs. Taft</u>, 110 Ohio St. 3d 1 (01/13/06), reports that provide economic or business decisions of companies should be confidential until the company makes a public announcement.]

C. Inspection, Copying and Release of Public Records

RC §149.43(B)(2) mandates that all public records held by state or local governmental entities (or their functional equivalent) be organized and maintained "...in a manner that they can be made available for inspection or copying 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)(2)

requires that public offices have available a copy of their current records retention schedules, at a location readily available to the public (ODJFS's retention schedules are available on-line from the ODJFS home page, and can be found under "Employee and Business Services"), and that public offices give requesters the opportunity to revise ambiguous or overly broad records requests.

RC §149.43(B)(1) states that, when a request for records is made to a state or local government entity (or its functional equivalent), all <u>public</u> records that are "responsive to the request shall be promptly prepared and made available for inspection to the requester 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 that requires no review and redaction of non-public, confidential, or privileged information, it must be released immediately.

The courts have ruled in most cases that the requester of **public** 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 **public** records for any of the aforementioned reasons is improper despite any type of state or local agency internal policy. The courts' decisions were codified in RC §149.43(B)(4) and (B)(5), which expressly state that public offices cannot require that a requester of **public** records disclose his/her identity, nor ask how the requester intends to use the records, as a condition of providing the public record. However, public offices may ask the requester to make the request in writing, and to disclose his/her/their identity, as well as inquire about the intended use of the records, as long as the office first tells the requester that a written request is not mandatory, and that it will only be used to help the public office identify, locate and deliver the requested public records.

However, if the records requested are exempt from the public records act (see exemptions in RC §149.43(A)(1)), or specifically made confidential or non-public under another federal or state law (e.g. identifying information about recipients of public assistance, child support services and unemployment compensation; personal information of public employees, including social security numbers and driver's license numbers), then verifying the identity, and possibly intentions, of the requesting party will be essential, in order to comply with federal/state confidentiality laws.

Also, 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. (See RC §149.43(B)(8))

RC §149.43(B)(6) says that any state or local agency that receives a 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." However, (B)(6) also allows a public office to require the requesting party to "pay in advance the cost involved in providing the copy of the public record in accordance with the choice made by the person seeking the copy..." Care should be taken to use encrypted email and other secure methods when transmitting confidential, sensitive or non-public information via electronic means. Other acceptable costs, which a public office can require the requester to pay in advance, 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 requester. This type of cost should be agreed upon between the parties before a contractor's services are utilized and the charges are passed on to the requester. 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 program area providing the records.

State and local agencies, upon request, must mail or transmit by any other means (RC §149.43(B)(7)) public records to requesters. However, the state or local agency can limit the number of records sent by United States mail to ten per month if the requester 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 of government, or nonprofit educational research), and, as stated above, the public office may require the requester to **pay in advance** the cost of postage and supplies used in the mailing, delivery or transmission. RC 149.43(B)(7) also allows public offices to limit the number of public records a person can request via a public office's website in digital format to ten per month, unless the records are unavailable on the public office's website and the person certifies to the office in writing that the records are not intended for commercial purposes.

D. Denying a Public Records Request & Potential Consequences for Improper Withholding

RC §149.43 (B)(3) states that if a request is denied, in whole or in part, a public office must provide the requester with an explanation, including the legal authority for the denial. Requesters must either be notified of any redactions of exempt or confidential information from an otherwise public record, or the redactions must be made "plainly visible", pursuant to RC §149.43 (B)(1). To make redactions "plainly visible", redactions should be made using black marker, block electronic redaction or some other method that allows the requesting party to see where items have been redacted, but **not what** precisely has been redacted.

Failure to release public records by an agency subject to RC §149.43 could result in a mandamus action being filed by the requester. Mandamus is a special legal writ which can be filed in the state common pleas, appellate or 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 requester 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, court costs and **statutory damages of \$100.00 per day** for each day after the filing of the mandamus action that the records are not provided, up to a maximum of \$1,000.00 (these provisions can be found in RC §149.43 (C), a summary of which is provided immediately below). 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 for ODJFS staff 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 or in-house counsel regarding legal decisions on public records or confidentiality.

RC §149.43 (C) permits aggrieved parties who are improperly denied public records, to collect court costs and statutory damages, in addition to attorney's fees. The amount of statutory damages is fixed at \$100.00 a day for each business day, beginning from the date the mandamus action is filed, and continuing until either the improperly denied public record is produced, or ten business days, whichever comes first. So, the maximum statutory penalty is \$1,000. This provision re-emphasizes the importance of responding to records requests in a timely manner,

which may require streamlining and restructuring of records responsibilities in some public offices.

Under RC \$149.43 (C), the court may reduce or not award both statutory damages and attorney's fees, if the court determines BOTH of the following: "(a) That, based on the ordinary application of statutory law and case law as it existed at the time of the conduct or threatened conduct [meaning the time the records were denied or delayed]...a well-informed public office or person responsible for the requested public records reasonably would believe that the conduct or threatened conduct ...did not constitute a failure to comply with an obligation in accordance with division (B) of" RC \$149.43; and "(b) That a well-informed public office or person responsible for the requested public records reasonably would believe that the conduct or threatened conduct ...would serve the public policy that underlies the authority that is asserted as permitting that conduct or threatened conduct."

Mandamus-related court costs may be awarded to the requester if either the public office fails to respond affirmatively or negatively to the records request within a reasonable time-frame, **OR** the public office promises the records to the requester, but fails to fulfill that promise within the specified period of time, **OR** the court determines that the public office acted in bad faith and that it only released the requested public records as a result of the filing of the mandamus action, but before the court issued any order. Court costs and attorney's fees are meant to be remedial and not punitive.

RC \$149.43 (E) requires that all elected officials or their appropriate designees attend public records training approved by the attorney general, and that all public offices (1) adopt a public records policy as guidance for responding to public records requests (see Internal Policy and Procedure (IPP) 8101 in Appendix A), and (2) distribute that policy to the individual in that public office that is designated as the "records custodian or records manager or [who] otherwise has custody of the records of that office". The public records policy adopted may not place any limits on the number of public records that the office will make available to a single person, or during a fixed period of time, and may not establish a fixed period of time before it will respond to a request for inspection or copying of public records, unless the period is less than 8 hours. RC \$109.43 requires that the attorney general's (AG's) office provide elected officials or their appropriate designees three hours of accredited training for each term of office, to (1) enhance the official's knowledge of the duty to provide access to public records and their knowledge of the open meetings laws, and (2) provide officials guidance in developing and updating their offices' public records policies. If the training is provided by the AG, it must be at no charge to the official or designee. If the training is provided by a public or private contractor for the AG, the AG can establish a reasonable registration fee, for which the official or designee can pay with public office funds. Any public records training attended can help public officials meet the requirements of RC §149.43(E).

E. Listed Exemptions to Ohio's Public Records Act

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:

...records 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 this state kept by the nonprofit or for-profit entity operating the 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 <u>more than forty</u> specific exceptions and one general exception. Thus, although the starting premise is that all records held by any public office are "public records"

that must be released to anyone upon request, part or all of a record may actually be withheld or redacted if it fits within one of the exceptions set out in the statute. The exceptions are listed in RC \$149.43(A)(1) as follows:

- **a. Medical records** See RC §149.43(A)(3) for definition of "Medical Record": any document or combination of documents, except births, deaths, and the fact of admission to or discharge from a hospital, that pertains to the medical history, diagnosis, prognosis, or medical condition of a patient and **that is generated and maintained in the process of medical treatment**.
- b. 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), or to proceedings related to determinations under RC § 2967.271 regarding the release or maintained incarceration of an offender to whom that section applies.
- c. Records pertaining to actions under sections <u>2151.85</u> and <u>2919.121(C)</u> of the Revised Code and to appeals of actions arising under those sections. Both sections make reference to **Juvenile Abortion Permission Records**.
- d. Records pertaining to Adoption Proceedings, including the contents of an adoption file maintained by the department of health under RC §§ 3705.12 to 3705.124.
- e. 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.
- f. Adoption Records Records specified in RC §3107.52(A).
- **g. 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.
- h. 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 (1) the identity of a suspect who has not been charged with the offense to which the record pertains; (2) the identify of an information source or witness to whom confidentiality has been reasonably promised; (3) information provided by an information source or witness to whom confidentiality has been reasonably promised, which information would reasonably tend to disclose the source's or witness's identity; (4) specific confidential investigatory techniques or procedures or specific investigatory work product; or (5) information that would endanger the life or physical safety of law enforcement personnel, a crime victim, a witness, or a confidential information source.
- i. Records containing information that is confidential under RC § 2710.03 (Mediation Communications) and RC § 4112.05 (Ohio Civil Rights Commission Investigations).
- j. DNA Records Stored in the DNA Database Pursuant to RC §109.573.
- **k.** Inmate Records released by the Department of Rehabilitation and Correction to the Department of Youth Services or a court of record pursuant to RC §5120.21(E).

- I. Records Maintained by the Department of Youth Services pertaining to children in its custody released by the Department of Youth Services to the Department of Rehabilitation and Correction pursuant to RC \$5139.05.
- m. 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.
- n. 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.
- o. Records Maintained by the Department of Job and Family Services Pursuant to RC §3121.894 (new hire and rehire reporting for child support by employers).
- p. Residential and Familial Information of Designated Public Service Workers. The definition in RC 149.43(A)(7) includes, but is not limited to, peace officers, parole officers, probation officers, bailiffs, prosecuting attorneys, assistant prosecuting attorneys, correctional employees, county corrections officers, community-based correctional facility employees, protective services workers, youth services employees, firefighters, EMTs, BCII investigators, forensic mental health providers, psychiatric hospital employees, judges, magistrates and federal law enforcement officers.

Information contained in records containing the following are, for the most part, not considered public records: (i) the address of the actual personal residence except for the state or political subdivision in which the individual 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 such an individual; (iv) the name of any beneficiary of employment benefits, including, but not limited to, life insurance benefits, provided to the individual by his/her employer; (v) the identity and amount of any charitable or employment benefit deduction made by the individual's employer from the individual'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 the individual, and (vii) a photograph of an undercover or plain clothes peace officer.

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 for the general public) who may access a personal residence address or the employer address of the 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 name and title of the journalist and her/his/their employer's name and address, and state that disclosure of the information would be in the public interest.

<u>State ex rel. Carr vs. City of Akron</u>, 112 Ohio St. 3d 351 (December 2006), Ohio Supreme Court held that Federal FOIA is inapplicable to city records, that records related to promotional exams within the fire department fall under exemption of RC \$149.43(A)(1)(p), as well as the general prohibition on releasing information in violation of state or federal law listed in RC \$149.43(A)(1)(v), which includes trade secrets as defined in RC \$1333.61(D).

- q. In the case of a County Hospital Operated Pursuant to RC Chapter 339, or a Municipal Hospital operated pursuant to RC Chapter 749, Information that Constitutes a Trade Secret, as defined in RC §1333.61.
- r. 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.
- s. 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 Sections 307.621 to 307.629, and child fatality review data submitted by the child fatality review board to the department of health pursuant to guidelines established under RC 3701.70, or to a national child death review database, other than the report prepared pursuant to RC \$307.626(A).
- t. 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.
- u. Test materials, examinations, or evaluation tools used in an examination for licensure as a nursing home administrator that the board of executives of long-term services administers under RC § 4751.15 or contracts under that section with a private or government entity to administer.
- v. Records the Release of Which is Prohibited by State or Federal Law see Parts III and IV of this Manual. In addition, there may be privacy and confidentiality laws and regulations that are analyzed in court decisions. (e.g., Trade Secret is defined and protected under RC 1333.61 through 1333.69, and is analyzed in State ex rel. Carr vs. City of Akron, 112 Ohio St. 3d 351 (2006)).
- w. Proprietary information of or relating to any person that is submitted to or compiled by the Ohio venture capital authority created under RC §150.01.
- x. Financial Statements and data any person submits for any purpose to the Ohio housing finance agency or the controlling board in connection with applying for, receiving, or accounting for financial assistance from the agency, and information that identifies any individual who benefits directly or indirectly from financial assistance from the agency.
- y. ODJFS and county agency records listed in RC §5101.29, which include:

- 1. Names and other identifying information regarding children enrolled in or attending a child day-care center or home subject to licensure or registration under RC Chapter 5104;
- 2. Names and other identifying information regarding children placed with an institution or association certified under RC §5103.03;
- 3. Names and other identifying information regarding a person who makes an oral or written complaint regarding an institution, association, child day-care center, or home subject to licensure or registration to the department or other state or county entity responsible for enforcing RC Chapter 5103. or 5104.;
- 4. Names, documentation, and other identifying information regarding a foster caregiver or a prospective foster caregiver, including the foster caregiver application for certification under <u>RC \$5103.03</u> and the home study conducted pursuant to <u>RC \$5103.0324</u>, except when the foster caregiver's certificate has been revoked, or he/she has been indicted or otherwise charged with any offense described in <u>RC \$2151.86(C)(1)</u>.
- z. Military discharges recorded with a county recorder under RC §317.24(B)(2).
- **aa.** Usage information, including names and addresses of specific residential and commercial customers of a municipally owned or operated public utility.
- bb. JobsOhio records listed in RC § 187.04(C), including records created by JobsOhio unless designated as public record in contract; records received by JobsOhio from any person or entity that is not subject to section RC 149.43, unless designated as public record in contract; records received by JobsOhio from a public office that does not treat the records as public; and, the work papers and reports of the independent CPA engaged to perform an annual financial audit of any JobsOhio corporation or non-profit entity, and work papers and reports of the supplemental compliance and control review, unless they are designated as public record via contract.
- cc. Identifying information about any person involved in the manufacture, transportation, distribution, testing or administration of equipment or drugs used in lethal injections for death sentences, as described in RC 2949.221(B) and (C).
- dd. "Personal information", as defined in <u>RC 149.45</u>, which includes social security numbers, driver's license numbers, state identification numbers, state and federal tax identification numbers, financial account numbers, and credit and debit card numbers.
- ee. Identifying information about any victim of domestic violence, human trafficking, or sexual assault who is participating in the Ohio Secretary of State's address confidentiality program under RC §§111.41 to 111.47. Under this exemption, a participant's voter registration records (including identifying information included on an absentee voter ballot and provisional ballot application, affirmation and envelope) is protected and not made available to the public.
- ff. Orders for active military service of an individual serving or with previous service in the U.S. armed forces, except that such order becomes a public record fifteen years after the published or effective date of the order.
- **gg.** Identifying information, contact information, and other personal information about minors that is included in police accident reports and other such traffic accident records, when the accident involves a school vehicle.

- hh. Protected health information included in a claim for payment or health claims data in any document, which identifies or could be used to identify the subject of the information.
- Any depiction by photograph, film, videotape, or printed or digital image (a) of a victim of an offense, the release of which would be an offensive and objectionable intrusion into the victim's expectation of bodily privacy and integrity; or (b) of a victim of a sexually oriented offense captured at the time the offense actually occurred.
- jj. Restricted portions of a body-worn camera or dashboard camera recording;
- kk. Records, documents, reports (other than reports submitted to the dept of health that summarize trends or patterns, including recommendations to decrease deaths, as described in RC §3707.77(B)), and information presented to the fetal-infant mortality review board RC 3707.71, and statements made by board members during meetings, and board work product, and data submitted by the board to the department of health or national infant death review database;
- Records, documents, reports and information presented to the pregnancyassociated mortality review board, statements made by board members during meetings, all board work product, and data submitted by the board to the department of health (other than biennial reports required under RC \$3738.08).
- mm. Except as provided in (oo) below, telephone numbers of crime victims and witnesses, and of parties to a motor vehicle accident, as listed in law enforcement reports and records.
- nn. A preneed funeral contract, and contract terms and personally identifying information of a preneed funeral contract that is contained in a report submitted by or for a funeral home to the board of embalmers and funeral directors under RC 4717.13(C), 4717.31(J) or 4717.41.
- oo. Telephone number of a party to a motor vehicle accident who is listed in any law enforcement report or record that is required to be filed under RC 5502.11, but only during the first 30 days after the occurrence of the accident.
- **Pp.** Records pertaining to individuals who complete Ohio school firearm safety training per RC 5502.703, who are seeking initial or ongoing permission to convey deadly weapons or dangerous ordnance into a school safety zone.
- Records, documents, reports, or other information presented to a domestic violence fatality review board established under RC 307.651, statements made by board members during board meetings, all board work product, and data submitted by the board to the department of health, other than a report prepared pursuant to RC 307.656;
- rr. Records, documents, and information pertaining to the address, place of employment, and similar identifying fact of crime victims and their representatives, when the prosecutor determines there are reasonable grounds for victims to be fearful of violence and intimidation by defendants and juvenile offenders, and if the court so orders, as set forth in RC 2930.07;
- Records of an existing qualified nonprofit corporation that creates a special improvement district under RC Chapter 1710 that do not pertain to a purpose for which the district is created.

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 is required or permitted (depending upon the exception) to withhold or redact the excepted information and release the portion that is public record.

II. OHIO'S PERSONAL INFORMATION SYSTEMS ACT

RC Chapter 1347 is the Ohio Personal Information Systems Act, which is sometimes also referred to as 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 <u>not</u> a "public record" pursuant to RC §149.43 of the Revised Code. <u>OAC rule 5101:9-22-15</u> is the ODJFS internal management rule related to RC Chapter 1347, and IPP 8102 is ODJFS' internal policy regarding requests for information from personal information systems.

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(A)(1) sets out exemptions to the provisions of RC Chapter 1347. They include:

- a. Any state or local agency, or part of a state or local agency, that performs as its principal function any activity relating to the enforcement of the criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend criminals;
- b. The criminal courts;
- c. Prosecutors;
- d. Any state or local agency or part thereof that is a correction, probation, pardon, or parole authority; and
- e. Personal information systems that are comprised of investigatory material compiled for law enforcement purposes by agencies that are not described in divisions (A)(1)(a) and (d) of this section. 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 <u>1347.04</u> 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 that 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 effect 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. (See RC §1347.08(C)(2))
- 2. Confidential Law Enforcement Investigation Records The same definition as contained in RC \$149.43. (See Part I of this memorandum & RC \$1347.08(E)(2))
- 3. Trial Preparation Records The same records as covered under RC §149.43. (See Part I of this memorandum & RC §1347.08(E)(2))
- 5. Information contained in the **Putative Father Registry** established by RC \$3107.062, regardless of whether the information is held by ODJFS or, pursuant to RC \$3111.69, the ODJFS Office of Child Support or a County CSEA. (See RC \$1347.08(F)(2))
- 6. Other Adoption Records Adoption records covered by RC §3107.17 and §3107.52(A). (See RC §1347.08(F)(3) and (F)(4))
- 7. Records Related to Investigations of Complaints about Nursing Homes and Residential Care Facilities maintained by the Ohio Department of Health (namely, info identifying patients, complainants and witnesses) are confidential, pursuant to RC §3721.031(A)(1) through (C), and can only be released pursuant to court order, written permission of the complainant or for administrative purposes. (See RC §1347.08(F)(5))
- 8. Records of Investigations of Long-Term Care Facilities or Residential Care Facilities by the Ohio Department of Health may be expunged/destroyed when the alleged abuse/neglect or misappropriation of property of the resident is unsubstantiated (RC §3721.23(D)(1)); and any Information that would Identify, or tend to disclose the Identity of, Individuals who Report or Provide Information regarding suspected abuse, neglect, or exploitation of a resident, or misappropriation of the resident's property to the facility or the Dept. of Health is prohibited from disclosure, except for purposes of investigation and administration, and as required by law (§3721.25(A)(1)). (See RC §1347.08(F)(6) and (F)(7))
- 9. Identities and Records of Nursing Facility residents, those who file Complaints against Nursing facilities, and those who provide Information about Nursing facilities cannot be released by ODJFS pursuant to RC \$5165.88(A)(1)). (See RC \$1347.08(F)(8))

- 10. Test materials, examination, or evaluation tools used in an examination for licensure as a nursing home administrator that the board of executives of long-term services administers under RC \$4751.15 or contracts under that section with a private or government entity to administer. (See RC \$1347.08(F)(9))
- 11. Statewide Automated Child Welfare Information System (SACWIS) data (See RC §1347.08(F)(10)).
- 12. Statewide Automated Adult Protective Services Information System (SAAPSIS) data (See RC 1347.08(F)(11)).

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 some other Ohio 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.

ODJFS Employee Access to Confidential Personal Information

<u>RC §1347.15</u> requires each state agency (this statute does NOT apply to county agencies or their employees) to adopt rules under RC Chapter 119, regulating access to the "confidential personal information" (CPI) the agency keeps, whether electronically or on paper.

The law requires ODJFS and other state agencies that collect and maintain CPI to adopt one or more rules containing:

- (1) criteria for determining which state employees may access, and which supervisory employees may authorize an employee to access, CPI;
 - In general, any access to information about recipients of ODJFS benefits or services, or about ODJFS employees, that is collected and maintained on ODJFS or state computer systems is strictly limited to those purposes authorized by ODJFS, and as directly related

- to the system user's official job duties and work assignments for, and on behalf of, ODJFS and/or a federal oversight agency (from IPP 3922 and JFS 7078).
- (2) a list of valid reasons for accessing CPI that is directly related to the state agency's exercise of its powers & duties;
- (3) a procedure for notifying any person whose CPI has been accessed for an invalid reason;
- references to any applicable federal/state confidentiality laws and rules that apply to that state agency's records (e.g., RC §§5101.27 and 4141.21-see Part III of this manual for detailed list);
- (5) a procedure for providing an individual with his/her own CPI upon written request from the individual (see provisions above in this part of the manual, as well as IPP 8102);
- (6) a provision that
 - (a) any computer system that the state agency acquires or upgrades, include a mechanism for recording state employee access to CPI; or that
 - (b) state employee access to CPI be manually logged, until such new or upgraded computer systems are put in place that allow for automated logging;

Exceptions to manual logging are:

- (i) when the subject of the CPI asks for his/her own CPI
- (ii) general research not aimed at individual CPI, but which results in identification of individuals and their CPI.
- (7) a requirement that each state agency designate a 'data privacy point of contact' to work with the Office of Information Technology's (OIT's) chief privacy officer, to:
 - (a) ensure that CPI is protected;
 - (b) ensure compliance with RC \$1347.15 and any related rules, and
 - (c) complete a privacy impact assessment, using the form created and posted by OIT; &
- (8) a requirement that electronically-maintained CPI be password protected.

Ohio Administrative Code Rule 5101:9-22-16, "Employee Access to Confidential Personal Information," and Internal Policy and Procedure (IPP) 3925, "ODJFS Data Access Policy," incorporate and implement the RC 1347.15 requirements listed above.

III. FEDERAL & STATE CONFIDENTIALITY LAWS 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.

A. GENERAL

1. TAX RETURN INFORMATION

Internal Revenue Code (IRC) Section 6103 (26 USC 6103) states that all income returns and return information shall be confidential, and that no officer or employee of any state, any local child support enforcement agency, or any local agency administering a public assistance, unemployment, or medical assistance program shall disclose any return or return information obtained by him/her in the course of his/her work responsibilities. IRC Section 7213 (26 USC 7213) makes unlawful disclosures a felony offense, and IRC Section 7431 (26 USC 7431) permits civil damages to be imposed on individuals who make unlawful disclosures.

In addition, 42 USC 664 allows the interception of federal tax refunds in order to satisfy child support obligations. 26 USC 6103 and IRS publication 1075 outline strict requirements for the handling of this information by state agencies operating child support programs.

OAC rule 5101:1-1-36(G): This cash assistance rule references section 1137 of the Social Security Act, which requires that ODJFS develop an Income & Eligibility Verification System (IEVS). Ohio's IEVS is integrated into Ohio Benefits, which allows ODJFS to obtain information from its own office of unemployment insurance operations (OUIO) and the social security administration (SSA). Under IEVS, ODJFS matches public assistance applicant/recipient social security numbers with OUIO's wage records and unemployment compensation records, as well as SSA's benefit earnings exchange records, and Supplemental Security Income (SSI) and Retirement, Survivors, Disability Insurance (RSDI) benefit information provided by SSA. If the source of any tax data contained in matched information is SSA, or some other federal agency, the information is considered federal tax information (FTI). Match information for IEVS which contains FTI must be protected from disclosure to unauthorized persons. The rule states that computer screen printouts or copies of letters mailed or received regarding FTI must be safeguarded. The rule requires that FTI not be commingled within the assistance group case record, because if it is commingled, the entire assistance group case record must be safeguarded in the same way as FTI, and labeled as SSA-provided FTI. The rule then sets out under what circumstances and to whom the Federal Tax Information can be released. 12/1/18.

OAC rule 5101:4-7-09: Rule pertains to use of IEVS in food assistance program. Rule says that, in general, unemployment compensation benefit information, SSI and social security data from the SSA are verified upon receipt, whereas county agencies must independently verify IRS information, and federal and state wage information obtained from SSA and the state unemployment office. The rule also specifies the types of independent verification that can be done, and the actions that county agencies must take when information is received as a result of data exchange agreements. Paragraph (G) restricts county usage of IEVS information to program administration (i.e., determining assistance group's eligibility or ineligibility for SNAP, and the amount of SNAP), and Paragraph (J) says that IEVS match information may only be disclosed as permitted in OAC rule 5101:4-1-13. Paragraph (K) requires that ODJFS and the county agencies keep a record for at least three years, or during the active life of the

application (whichever is longer) of any release of confidential IEVS information (e.g., federal tax information (FTI), including SSA match data) to any non-ODJFS or non-county agency employee. County/state workers must record the disclosure(s) in the applicant's case file, and the county must keep track of it in BENDEX. Paragraph (I) says that matches containing FTI are confidential, must be safeguarded as required in OAC rule 5101: 4-1-13, must be stored in a place physically safe from access by unauthorized individuals, and cannot be commingled with the rest of the case record. 6/1/22.

OAC rule 5101:9-9-25 outlines federal tax return information safeguarding procedures, which are intended to maintain confidentiality of taxpayer data; and, OAC 5101:9-9-25.1 does the same for county agencies. 10/4/21.

OAC Rule 5101:9-9-26: Ohio rule that implements IRS Publication 1075 provision requiring individuals who are given access to federal tax information (FTI) to undergo FBI and BCI fingerprint checks to identify suitability issues associated with access to FTI, as well as validate their eligibility to lawfully work in the United States. An initial background check must be successfully completed for all final candidates, current employees, current or prospective intermittent employees, county agency contractor/contract employees, or temporary service personnel to determine suitability to access FTI, and reinvestigation must occur every five years from the date it was initially determined, for individuals remaining in a position with access to FTI. 4/1/23.

OAC rule 5101:12-1-22: ODJFS Office of Child Support rule regarding safeguarding of federal tax information (FTI) received from the IRS. See also 26 USC 6103 and IRS Publication 1075. 11/1/22.

OAC rule 5101:12-1-22.1: ODJFS Office of Child Support procedure for conducting county CSEA visits and requiring county CSEA self-inspection, to verify FTI is being properly safeguarded. 11/1/22.

2. SOCIAL SECURITY NUMBERS

As a result of growing problems of identity theft and intrusions on personal privacy, this section on Social Security numbers was added to the Manual, as a reminder to all government employees of the importance of safeguarding the confidentiality of all social security numbers in the possession of state and local government. Unless specifically authorized by law, there should be no public disclosure of SSNs of government employees, public assistance applicants/recipients, child support clients, unemployment insurance claimants, workforce development participants, private sector employers/businesses/contractors, and participants in any other program administered by ODJFS or a county DJFS which collects and maintains social security numbers (SSNs) and related data. The Internal Revenue Code, 26 USC 6109(d), states that an SSN is issued to an individual for tax identification purposes.

<u>5 USC § 552</u> (public information) and <u>5 USC § 552a</u> (the Privacy Act of 1974) are the federal counterparts of the Ohio public information and privacy laws.

<u>5 USC § 552(b)</u> lists exemptions to the federal Freedom of Information Act, including matters that are specifically exempted from disclosure by statute ((b)(3)) and trade secrets and commercial or financial information obtained from a person ((b)(4)).

<u>5 USC § 552a(a)(8),(e),(o) & (p)</u>: This statute does not prohibit release of the Social Security numbers but creates an individual expectation of privacy by requiring that any federal government agency that requests an individual to disclose his Social Security number to 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. Also requires that non-federal agencies (like ODJFS) enter into matching agreements with source agencies (like the Social Security

Administration), to independently verifying matched information, and to notify applicants for and recipients of financial assistance of their right to contest the findings of any match that results in adverse action. 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. In addition, ORC 149.43(A)(1)(dd) exempts disclosure of social security numbers to the public, and ORC 1347.12 requires notification to individuals if their social security numbers are accessed from any government system without authorization, and/or used or redisclosed inappropriately. Requests for release of Social Security numbers in other situations (e.g., provider information) should be analyzed on a case by case basis. Also cited as Sections 7(a) and (b) of the Privacy Act of 1974.

7 USC 2011-2036, Section 1137(a) of the Social Security Act (42 USC 1320b-7), and 42 CFR 435.910, authorize the collection and use of Social Security numbers in the Food Assistance and Medicaid programs. (See also OAC Rules 5101:1-1-03 and 5101:1-3-09). Social Security Numbers can be used to determine eligibility and verify information.

<u>7 USC 2018(c)</u> and <u>7 CFR 278.1(q)</u>: Limit access to and disclosure of food assistance retailer information, such as identities of store owners and personnel, and specific proprietary data. While information can be used for administration of food assistance program, special provisions apply to employer identification numbers (EINs) and federal employer identification numbers (FEINs). The disclosure of SSNs and EINs is limited to qualifying Federal agencies or instrumentalities which otherwise have access to SSNs and EINs based on law and routine use. Release of information under this CFR provision is limited to information relevant to the administration or enforcement of the specified laws and regulations, as determined by FNS.

29 USC 3141(i)(3), the Workforce Innovation and Opportunity Act (WIOA), requires compliance with 20 USC 1232g (and the corresponding regulations in 34 CFR part 99), the Family Educational Rights and Privacy Act of 1974 (FERPA), which was enacted to protect student privacy rights in education records, and applies to all public and private educational institutions that receive federal educational funds. FERPA requires safeguards to protect against the disclosure of personal identifying data regarding students.

<u>42 USC 405(c)(2)(C)(viii)(I)</u>: Social security account numbers and related records that are obtained or maintained by authorized persons pursuant to any provision of law, enacted on or after October 1, 1990, are confidential and non-disclosable.

<u>20 CFR 603.4</u> and <u>20 CFR § 603.9</u>: Require state unemployment compensation (UC) agencies to establish procedures to protect the confidentiality of information against unauthorized access, disclosure or redisclosure. <u>20 CFR 603.5</u> authorizes state unemployment compensation agencies to share wage and claim data with certain requesting agencies, but only for the purpose of verifying eligibility for, and the amount of, benefits. These provisions also apply to the State Wage Interchange System (SWIS), which is an interstate data exchange system that facilitates the exchange of UC wage records for use by participating states in assessing and enhancing the performance of various programs identified in the Workforce Innovation and Opportunity Act (WIOA).

<u>42 CFR 435.910</u>: Requires Medicaid applicants to furnish state Medicaid agency with their social security number. But, agency must advise applicant of legal authority for requesting SSN, and how the agency will use the SSN (i.e., verifying income, eligibility, and amount of assistance); assist applicant in obtaining an SSN or other evidence if they do not have one; and not delay services to an otherwise eligible individual.

<u>RC § 149.45</u>: Defines "personal information" to include social security numbers, driver's license numbers, state identification numbers, state and federal taxpayer identification numbers, financial account numbers, and credit and debit card numbers, which are all exempt from

treatment as public record under RC 149.43(A)(1)(dd). Also prohibits public offices from making Social Security numbers available to the general public on the Internet without first redacting, encrypting or truncating the SSN. In addition, an individual may ask a public office or employee to redact/remove the individual's federal tax ID number, driver's license number and bank account number (and protective services workers, prosecutors, and other designated public service workers can also ask that their residential and familial information be redacted) from any public website. The public office must, within five business days of receiving a request to do so, either redact the personal (and sometimes residential/familial) information from internet postings, or explain to the requester why the redactions are impracticable. A public office or employee is not liable in damages in a civil action for any harm an individual sustains as a result of including the individual's personal information on the Internet, unless the public office or employee acted with malicious purpose, in bad faith, or in a wanton or reckless manner.

RC § 1347.12: Sets forth procedures for public entities, except for HIPAA-covered state entities, when they become aware of electronic security breaches, which often include names and social security numbers (see also AG's authority to investigate breaches in 1347.191; and penalties that court can impose in 1349.192). 9/29/15.

RC § 5101.181 and RC § 5101.182: State that the 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 personnel 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.

OAC rule 5101:1-1-03: Makes all information and records collected, received or maintained by ODJFS or a CDJFS concerning an applicant for, or recipient or former recipient of, OWF or PRC (TANF) benefits confidential. The rule describes under what general circumstances the information can be released, the forms needed to authorize information releases, and procedures to follow if information is requested through court process, including immediately notifying the recipient of the request and informing the court of the laws and regs prohibiting disclosure. Also restricts ODJFS and county DJFS use of retirement, survivors and disability insurance (RSDI), supplemental security income (SSI), and benefit earnings exchange records (BEER) information from the Social Security Administration (SSA) to "routine use" and requires approval from beneficiary or SSA for non-routine use. Also requires that disclosures of SSAprovided information to non-ODJFS/CDJFS employees be recorded, even when it is a routine use, and that the records be retained for five (5) years. Federal tax information (FTI) and unearned income information provided by the Internal Revenue Service (IRS) is only to be used for determining TANF and SNAP eligibility and the amount of benefits, and can only be shared with the subjects of the information and their duly appointed representatives with explicit authority to obtain tax return information. Disclosure awareness training for state/county employees with FTI access, standardized record-keeping for requests and disclosures of FTI, and special safeguarding and access limits for SSA and IRS data are also described in the rule. 2/1/22.

OAC rule 5101:1-3-09: Describes the social security number requirement for the Ohio Works First (OWF) cash assistance program. 2/1/22.

OAC rule 5101:4-3-22(H): Sets out the acceptable purposes for utilizing a SNAP/Food Assistance recipient's social security number. 1/1/23.

3. VOTER REGISTRATION

RC § 111.42: Allows victims of domestic violence, stalking, human trafficking, rape, or sexual battery to apply to the Ohio Secretary of State for an address designated by the Secretary of State, to serve as that individual's mailing address, and to thereby shield their actual address from being accessed or viewed by the general public. This law affects ODJFS and county agency collection and treatment of client, employee and contractor addresses. However, RC §111.43(E)(1)(b)(iv) allows participants to complete a form authorizing the Secretary of State to disclose confidential address and other information for verification purposes, including to public assistance program administrators. Paragraph (E)(3) prohibits redisclosure of information, 4/29/22.

RC § 3503.10(E)(4): Sets forth requirements for designated public agencies (e.g., county DJFS) to assist individuals with voter registration, including keeping certain information confidential, such as the identity of the public agency through which a person registered to vote, or updated his/her voter registration, or declined to register to vote. Purpose is to avoid divulging that a particular registered voter is an applicant for/recipient of either public assistance, or some other service/benefit administered by/through ODJFS and its county counterparts, which would violate recipient confidentiality. 9/26/2003.

4. AUDITS

2 CFR 200.337: Non-federal entities must give the federal inspector general, comptroller, awarding agency, and pass-through entity timely and reasonable access to any records or personnel the non-federal entity has, that are pertinent to the federal award, for the purpose of audits, examinations, interviews, excerpts, and transcripts. However, the federal awarding agency, pass-through entity and authorized representative should only be given access to the true names of crime victims in extraordinary and rare circumstances, and not for "routine monitoring." 11/12/20.

2 CFR 200.338: While non-federal entities are not generally subject to federal FOIA requirements (5 USC 552), federal awarding agencies cannot place restrictions on the non-federal entity's disclosure of its records to the public, except for personally identifiable information and other information contained in those records that would be considered exempt/confidential. 11/12/20.

RC §121.22(D)(2)&(D)(12): Exempts the following meetings from the open meetings (Sunshine laws) requirements-(1) Audit conferences between ODJFS audit staff and officials of the public office (county DJFS or CSEA) being audited, and (2) Audit conferences between the state auditor/independent CPA and officials of the public office (ODJFS) being audited. 4/7/23.

RC §5101.37(D): Makes audit reports, working papers and other audit-related records non-public, until they are formally released by ODJFS. 9/29/11.

B. FOOD ASSISTANCE/SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM (SNAP)

Federal Laws and Regulations:

7 USC 2015(d)(4): Requires states to implement an employment and training program.

<u>7 USC 2018(c)</u>: Limits access to and disclosure of information provided to ODJFS and counties by retail food stores and wholesale food concerns, such as income and sales tax filings, purchase invoices, EBT equipment records, and transaction and redemption data provided through EBT

system. Information can only be used for administration of the food assistance program (SNAP) and women, infants and children (WIC) program, and related investigations and enforcement. See also 7 CFR 278.1(q), which reiterates that ownership information and sales and redemption data may be used for SNAP/WIC program administration, investigation and enforcement, but imposes additional restrictions on which parties may access, use and disclose employer identification numbers (EINs) & social security numbers (SSNs), and for what purposes.

<u>7 USC 2020(e)(8)</u>: Requires that states have safeguards in place to protect information obtained from SNAP applicant households, and lists what uses and disclosures are permissible, and to which parties, for what purposes, and under what conditions information about food assistance applicants and recipients may be disclosed.

7 CFR § 272.1(c): Restricts the release of information obtained from food assistance applicants/recipients to specific persons and situations. They are: (1) persons directly connected with the administration or enforcement of the Food Assistance Act; other federal assistance programs and federally-assisted State programs providing assistance on a means tested basis to low income individuals; and, general assistance programs that are subject to the joint processing requirements in 7 CFR \$273.2(j)(2); (2) persons directly connected with the administration or enforcement of programs required to participate in the State Income Eligibility Verification System (IEVS), to the extent SNAP information is useful in verifying eligibility or benefit amounts under those [other] programs; (3) persons directly connected with verification of immigration status of aliens applying for SNAP through the Systematic Alien Verification for Entitlements (SAVE) program, to the extent needed to identify the individual for verification purposes; (4) persons directly connected with administration of Title IV-D child support, and to assist federal HHS employees in verifying eligibility for Disability benefits under Titles II and XVI of the SSA; (5) employees of federal comptroller for audit purposes; (6) local, state or federal law enforcement officials in connection with Food Assistance Act violations (must be in writing and contain identity of individual requesting information, authority to do so, violation being investigated, and identity of person being investigated) or (7) if assistance group (AG) member is fleeing to avoid prosecution or custody for a crime that would be classified as a felony or who is violating a condition of probation or parole (in which case AG member's address, SSN and photo may be released to law enforcement, but only after law enforcement officer provides the name of the individual being sought); (8) local educational agencies administering the national school lunch or breakfast program, for purposes of certifying the eligibility of school-aged children for receipt of free meals, based on their receipt of SNAP; and (9) written request from food assistance recipient or authorized representative except for information concerning the nature or status of a pending criminal prosecution 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 that does not identify specific food assistance applicants or recipients are "public records" and must be made available to the general public upon request.

7 CFR § 273.2(f)(4): states "When talking with collateral contacts, State agencies should disclose only the information that is absolutely necessary to get the information being sought. State agencies should avoid disclosing that the household has applied for SNAP benefits, nor should they disclose any information supplied by the household...or suggest that the household is suspected of any wrong doing."

State Statutes and Rules:

RC § 5101.26: Sets out definitions of terms for confidentiality purposes. Effective 9/29/11, 10/01/11 and 9/29/13, various amendments separated "medical assistance recipient" from the definition of "public assistance recipient" by defining "public assistance" as "financial assistance or social services that are provided under a program administered by [ODJFS] or a county

agency..." and stating that ""Public assistance" does not mean medical assistance provided under a medical assistance program, as defined in 5160.01 of the Revised Code."

RC § 5101.27: Sets out confidentiality requirements for all non-medical public assistance (PA) programs, including OWF, PRC, and child care subsidies. Section (C) requires ODJFS to release the minimum information necessary about a public assistance recipient who receives publicly funded child care, to the Ohio Department of Health or tuberculosis control unit, for purposes directly connected to a public health investigation related to RC 3301.531 or 5104.037, but only if ODJFS is unable to timely obtain voluntary, written authorization from the recipient and to the extent permitted by federal law. ODJFS must immediately notify the public assistance recipient of any release of their information that is based on Section (C). 4/12/21.

RC § 5101.272: Sets out what elements public assistance recipients must include in a written authorization form, to allow ODJFS and/or county DJFSs to disclose recipient information to third parties and the recipient's legal counsel, as described in RC 5101.27(D) and (E). The release authorization provisions for medical assistance recipients are in RC 5160.46.

OAC rule 5101:4-1-13: Paragraph (C) governs the disclosure of SNAP/Food Assistance information. This section reflects RC Chapter 1347, 7 USC 2020(e)(8) and 7 CFR §272.1. Paragraph (D) requires that parties receiving information under (C) adequately protect it from unauthorized access and redisclosure. Paragraphs (D) and (E) state that IEVS information and FTI data are subject to additional federal safeguarding requirements imposed by the SSA and IRS, including IRS Pub. 1075; that federal and state wage and unemployment benefit information must only be used to determine SNAP eligibility and benefit amounts; and that SNAP assistance group information must not be recorded by SSA and IRS staff. 3/1/23.

OAC rule 5101:4-2-09(I)(2): States that a release signed by a SNAP/Food Assistance applicant or recipient is not necessary when a CDJFS is attempting to secure verification from collateral sources for food assistance eligibility purposes. However, the county agency should disclose only the information that is absolutely necessary to get the information being sought and avoid disclosing that the assistance group (AG) has applied for SNAP. No information provided by the AG may be disclosed to the collateral contact, and there must be no suggestion that the AG has provided any incorrect information. Paragraph (J) cites OAC rule 5101:4-7-09 as governing the release of Income & Eligibility Verification System (IEVS) information. 9/1/21.

OAC rule 5101:4-3-07(I): Requires a county agency to report to ODJFS, when an applicant or recipient is "known to be an illegal alien," as determined by findings or conclusions made as part of a formal determination by the U.S. citizenship and immigration services (USCIS) under U.S. DHS. 2/1/21.

OAC rule 5101:4-3-22(H): Sets out the acceptable administrative purposes for utilizing a SNAP/Food Assistance recipient's social security number. 1/1/23.

OAC 5101:4-7-08: Requires county DJFSs to use the Office of Child Support's national directory of new hires and state directory of new hires to ensure that all employment has been reported, verified and used appropriately when determining SNAP eligibility. After receiving an alert of a new hire match in the statewide automated eligibility system, the county agency must contact the assistance group to obtain verbal and documentary verification of employment and income.

OAC rule 5101:4-7-09: Rule pertains to use of IEVS in food assistance program. In general, unemployment compensation benefit information, SSI and social security data are verified upon receipt, whereas county agencies must independently verify IRS information, federal wage information obtained through the Benefit Earnings Data Exchange (BENDEX) from SSA, and state wage information obtained from the state unemployment office. The rule also specifies the types of independent verification that can be done, and the actions that county agencies must take when information is received as a result of data exchange agreements. Paragraph (G) restricts county usage of IEVS information to program administration (i.e., determining assistance group's eligibility for SNAP, the amount of SNAP, and SNAP investigations and

prosecutions), and Paragraph (J) says that IEVS match information may only be disclosed as permitted in OAC rule 5101:4-1-13. Paragraph (K) requires that ODJFS and the county agencies keep a record of any release of confidential IEVS information (federal tax information (FTI), including SSA match data) to any non-ODJFS/county agency employee, for at least three years, or during the active life of the application (whichever is longer). County/state workers must record details of the disclosure(s) in the applicant's case file, and the county must keep track of it in BENDEX. Paragraph (I) says that matches containing FTI are confidential, must be safeguarded as required in OAC rule 5101:4-1-13, must be stored in a place physically safe from access by unauthorized individuals, and cannot be commingled with the rest of the case record. 6/1/22.

OAC rule 5101:4-8-30(F): Requires safeguarding of tax information used for the SNAP/Food Assistance Treasury Offset Program (TOP). 3/1/20.

OAC rule 5101:9-22-15: This ODJFS internal management rule defines "personal information" and states that release of personal information is governed by exemptions to public records listed in RC 149.43(A), the Personal Information Systems Act (RC Chapter 1347), and dozens of federal and state laws and regulations like the ones listed in this Manual that make applicant, recipient, and participant information confidential or non-public. The rule also requires that individuals who are authorized to access and use personal information in ODJFS-maintained systems take reasonable precautions to protect the personal information from unauthorized use, disclosure, modification or destruction, and take role-based and job-specific security and privacy training; that aggregate data be masked in accordance with Section III of IPP 3002; that privacy impact assessments be completed for new and existing systems containing personal information, to ensure that the appropriate level of privacy and security measures are in place; and that data breaches and exposures be reported to the chief inspector, chief privacy officer, and chief information security officer. Disciplinary action can be imposed for intentional violations by employees, and questions regarding permissible and impermissible disclosures can be addressed to agency legal counsel. 3/24/22.

C. TEMPORARY ASSISTANCE for NEEDY FAMILIES (TANF) and/or CASH ASSISTANCE

(Ohio Works First & 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. There are also Title IV-A programs established by the General Assembly or Governor's Executive Order that are administered or supervised by ODJFS pursuant to section 5101.801 of the Revised Code that are not considered "assistance," and are instead classified as "benefits" or "services".

Federal Laws 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 the <u>current address</u> of any TANF recipient if the law enforcement officer needs the address to conduct the officer's official duties and the location or apprehension of the recipient is within such official duties. <u>However</u>, the officer must furnish the state agency or county agency with the name of the recipient.

45 CFR § 205.50: Use or disclosure of information concerning applicants and recipients of financial assistance under Title IV-A (funded with TANF) is limited to purposes directly connected with: (1) administration of the plan or program; (2) investigations, prosecutions, or criminal or civil proceedings conducted in connection with the administration of any such plans or programs; (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) information to the Employment Security Agency as required by law; (5) audits conducted in connection with the administration of any such plan or program, by a government entity authorized by law to conduct such audits; (6) administration of a state unemployment compensation program; and (7) reporting to the appropriate agency or official information on known or suspected child abuse or exploitation, or negligent treatment or maltreatment of a child receiving aid under circumstances which indicate that the child's health or welfare is threatened.

Information to be safeguarded includes at least: (1) names and addresses of applicants and recipients and amounts of assistance provided; (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 those of the agency administering the financial assistance program. 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 recipient or applicant information is subpoenaed. This provision also applies to IV-E information.

ODJFS and/or the county agency may provide the address of a recipient to state or local law enforcement upon request, if law enforcement first provide the state or local agency with the recipient's name and social security number, and satisfactorily demonstrate that the recipient is a fugitive felon (as defined by the State), the location or apprehension of such felon is within the law enforcement officer's official duties, and the request is made in the proper exercise of those duties.

State Statutes and Rules:

<u>RC § 307.983:</u> Each board of county commissioners is required to establish a plan of cooperation with the county family services agencies and workforce development entity serving the county 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, a transportation work plan, and procedures established for providing services to children who are frequently relocated, shall permit the exchange of information needed to improve services and assistance to individuals and families and the protection of children. A private or government entity receiving such information shall be bound by the same standards of confidentiality as the entity that provides the information. Amended 3/24/21.

RC § 4123.27: Allows the sharing of recipient specific information related to OWF and PRC with the Bureau of Workers' Compensation for matching purposes. BWC may only share names and SSNs of public assistance recipients who are also receiving workers' comp, and the amount of

workers' comp, with the State Auditor. Statute also appears to permit sharing with the 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. These entities will in turn notify the state auditor as to whether such individual is receiving wages or benefits, and the amount. 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. The state auditor then determines whether an overpayment of public assistance occurred and thereafter notifies ODJFS.

RC § 5101.182: For purposes of determining overpayments, the statute permits ODJFS to report recipient names and SS #s to the tax commissioner, who then reports to the state auditor which recipients filed tax returns, and how much gross income the recipients received. 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. Effective 9/29/11, 10/01/11 and 9/29/13, various amendments separated "medical assistance recipient" from the definition of "public assistance recipient" by defining "public assistance" as "financial assistance or social services that are provided under a program administered by [ODJFS] or a county agency..." and stating that ""Public assistance" does not mean medical assistance provided under a medical assistance program, as defined in 5160.01 of the Revised Code."

RC § 5101.27: Sets out confidentiality requirements for all non-medical public assistance (PA) programs, including OWF, PRC, and child care subsidies. Section (C) requires ODJFS to release the minimum information necessary about a public assistance recipient who receives publicly funded child care, to the Ohio Department of Health or tuberculosis control unit, for purposes directly connected to a public health investigation related to RC 3301.531 or 5104.037, but only if ODJFS is unable to timely obtain voluntary, written authorization from the recipient and to the extent permitted by federal law. ODJFS must immediately notify the public assistance recipient of any release of their information that is based on Section (C). 4/12/21.

RC § 5101.272: Sets out what elements public assistance recipients must include in a written authorization form, to allow ODJFS and/or county DJFSs to disclose recipient information to third parties and the recipient's legal counsel, as described in RC 5101.27(D) and (E). The release authorization provisions for medical assistance recipients are in RC 5160.46.

RC § 5101.273: Permits ODJFS to disclose public assistance recipient information to HHS and neighboring states to actively participate in a PA reporting information system. Eff. 9/29/13.

RC § 5101.28: Upon the request of ODJFS or a county DJFS, law enforcement agencies are required to verify whether a public assistance recipient is a fleeing felon or in violation of probation or parole. Upon the request of law enforcement, CDJFS and ODJFS must share information regarding recipients of OWF and PRC (but not medical assistance or services) with law enforcement agencies as defined in RC § 5101.26, for the purpose of investigations, prosecutions and criminal and civil proceedings that are within the scope of the law

enforcement agency's official duties, as well as to the State Auditor's Office for statutory audit purposes. However, 45 CFR 205.50 only permits agencies administering TANF to disclose the recipient's address; and, only if law enforcement provide the state or county DJFS with the name of the recipient, whatever other identifying information is needed to retrieve the recipient's address, and satisfactorily demonstrate that the individual is a fleeing felon, that apprehension of the individual is within their official duties, and that the officer is properly exercising those duties.

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, disclosure and preservation of the information generated or received by ODJFS, county agencies, other state and county entities, contractors, grantees, private entities, or officials participating in the administration of public assistance programs.

<u>RC § 5101.80:</u> 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 5101:1-1-03: Makes all information and records collected, received or maintained by ODJFS or a CDJFS concerning an applicant for, or recipient or former recipient of, OWF or PRC (TANF) benefits confidential. The rule describes under what general circumstances the information can be released, the forms needed to authorize information releases, and procedures to follow if information is requested through court process, including immediately notifying the recipient of the request and informing the court of the laws and regs prohibiting disclosure. Also restricts ODJFS and county DJFS use of retirement, survivors and disability insurance (RSDI), supplemental security income (SSI), and benefit earnings exchange records (BEER) information from the Social Security Administration (SSA) to "routine use" and requires approval from beneficiary or SSA for non-routine use. Also requires that disclosures of SSAprovided information to non-ODJFS/CDJFS employees be recorded, even when it is a routine use, and that the records be retained for five (5) years. Federal tax information (FTI) and unearned income information provided by the Internal Revenue Service (IRS) is only to be used for determining TANF and SNAP eligibility and the amount of benefits, and can only be shared with the subjects of the information and their duly appointed representatives with explicit authority to obtain tax return information. Disclosure awareness training for state/county employees with FTI access, standardized record-keeping for requests and disclosures of FTI, and special safeguarding and access limits for SSA and IRS data are also described in the rule. 2/1/22.

OAC rule 5101:1-1-36: This cash assistance rule references section 1137 of the Social Security Act, which requires that ODJFS develop an Income & Eligibility Verification System (IEVS). Ohio's IEVS is integrated into Ohio Benefits, which allows ODJFS to obtain information from its own office of unemployment insurance operations (OUIO) and the social security administration (SSA). Under IEVS, ODJFS matches public assistance applicant/recipient social security numbers with OUIO's wage records and unemployment compensation records, as well as SSA's benefit earnings exchange records (BEER), and SSI and RSDI benefit information provided by SSA to ODJFS' state verification exchange system (SVES). If the source of the matched information is SSA, or some other federal agency, the information is considered federal tax information (FTI). Match information for IEVS which contains federal tax data must be protected from disclosure to unauthorized persons. The rule states that computer screen printouts or copies of letters mailed or received regarding FTI must be safeguarded in accordance with federal and state law and IRS Publication 1075. The rule requires that FTI not be commingled within the assistance group case record, because if it is commingled, the entire assistance group case record must be safeguarded in the same way as FTI, and labeled as SSA-provided FTI. See also OAC rules 5101:9-9-25, 5101:9-9-25.1, and 5101:9-9-26 for FTI restrictions. IEVS data is available to ODJFS and county DJFS employees for determining past and current eligibility. Aside from that IEVS data can only be released to the subject of the information, and details of all disclosures to non-ODJFS/CDJFS employees must be recorded and retained for five (5) years, including in the assistance group record and the county's central file of IEVS disclosures. 12/1/18.

OAC rule 5101:1-3-10: Requires the CDJFS to collect and report various types of data regarding an assistance group to the CSEA.

OAC rule 5101:2-33-28: Requires PCSAs to engage in joint planning and sharing of information with CDJFS in certain circumstances, including for families receiving OWF. However, CDJFS is required to keep child abuse/neglect information that it receives in a separate file, not in the CDJFS' case record, to help maintain confidentiality. 8/1/20.

OAC rule 5101:9-22-15: This ODJFS internal management rule defines "personal information" and states that release of personal information is governed by exemptions to public records listed in RC 149.43(A), the Personal Information Systems Act (RC Chapter 1347), and dozens of federal and state laws and regulations like the ones listed in this Manual that make applicant, recipient, and participant information confidential or non-public. The rule also requires that individuals who are authorized to access and use personal information in ODJFS-maintained systems take reasonable precautions to protect the personal information from unauthorized use, disclosure, modification or destruction, and take role-based and job-specific security and privacy training; that aggregate data be masked in accordance with Section III of IPP 3002; that privacy impact assessments be completed for new and existing systems containing personal information, to ensure that the appropriate level of privacy and security measures are in place; and that data breaches and exposures be reported to the chief inspector, chief privacy officer, and chief information security officer. Disciplinary action can be imposed for intentional violations by employees, and questions regarding permissible and impermissible disclosures can be addressed to agency legal counsel. 3/24/22.

D. MEDICAL

NOTE: THE INFORMATION IN THIS SECTION MAY NOT BE CURRENT OR ACCURATE. The Ohio Department of Medicaid (ODM) administers or oversees the administration of Medicaid-related assistance programs in Ohio. Therefore, to obtain the most current information regarding applicable federal and state confidentiality laws that apply to medical assistance records, contact ODM (legal@medicaid.ohio.gov or mcdlegal@medicaid.ohio.gov) or visit Medicaid.Ohio.gov.

1. MEDICAID

Federal Laws and Regulations:

42 USC § 1396a(a)(5): State and local governments must perform Medicaid eligibility function, not private contractor. See also State Medicaid manual, Sections 2905 and 2909(B) & (C).

And, <u>42 USC 1396a(a)(7)</u> requires state agencies to provide safeguards that restrict use or disclosure of information about Medicaid applicants/recipients to purposes directly connected with (a) state plan administration and (b) the exchange of information necessary to verify certification of children's eligibility for free or reduced school breakfast/lunch. State agencies are bound by these requirements, as further interpreted in 42 CFR 431.300 to 431.307, which

require that use and disclosure of applicant and recipient info only be permitted when directly connected to the administration of the State Plan.

Also, <u>42 USC 1320b-7</u> allows ODJFS to operate IEVS as part of Ohio Benefits, but IEVS data is provided to us by the U.S. Treasury Dept. under 26 USC 6103(I)(7), and only entities covered by 26 USC 6103 can access IEVS/ Ohio Benefits.

42 USC § 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 Veterans Affairs, or by the state (ODJFS/ODM) or its contractor, 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, and to permit the Comptroller General, Director of the Congressional Budget Office (CBO), Medicare Payment Advisory Commission, and Medicaid Payment & Access Commission to review the information.

<u>42 CFR Part 2</u>: Serves to protect patient records created by federally assisted programs for the treatment of substance use disorders (SUD), and lists restrictions on redisclosure.

42 CFR § 431.10: Single state agency must perform Medicaid administrative function. See also Chapter 2 of the State Medicaid Manual.

<u>42 CFR § 431.300:</u> Access to, and use and disclosure of, Medicaid information of applicants and beneficiaries (recipients) must be safeguarded by the state, so that it is restricted to purposes directly connected with the administration of the Medicaid program.

42 CFR § 431.301 & SSA §1902(a)(7): requires state's Medicaid plan to provide safeguards that restrict the use or disclosure of information concerning applicants/recipients to purposes directly connected with plan administration. 42 CFR Part 431, Subpart F.

42 CFR § 431.302: Says that purposes directly related to state plan administration of the Medicaid program include: (1) establishing eligibility; (2) determining the amount of medical assistance; (3) providing services for beneficiaries (recipients); & (4) conducting or assisting an investigation, prosecution, or civil or criminal proceeding related to plan administration.

42 CFR § 431.305: Specifies the types of Medicaid information that must be safeguarded, including: (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) any information received for verifying income eligibility and amount of medical assistance payments (income information received from the SSA or IRS must be safeguarded according to the requirements of the agency that furnished the data); (7) any information received in connection with the identification of legally liable third party resources under RC §433.138, and (8) social security numbers.

<u>42 CFR § 431.306:</u> Requires ODM to establish 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, or the information is used to verify income and determine eligibility. 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. Sections (g) and (h) require data exchange agreements if information is shared in certain situations.

42 CFR § 435.904: While "initial processing" of Medicaid applications may be contracted out to non-employees, initial processing excludes evaluating Medicaid application information and supporting documents, as well as making eligibility determinations. Only state/county

employees can make eligibility determinations. State/county contractors can only do "initial processing", which excludes eligibility determinations.

42 CFR § 435.945: Requires the Ohio Department of Medicaid to verify Medicaid eligibility and the amount of medical assistance payments. 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) (AFDC, Medicaid, State-administered supplementary payment programs under Section 1616(a) of the Act, SWICA, Unemployment Compensation, Food Assistance, and any state program administered under a plan approved under Title I, X, XIV or XVI); 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 under Title XVI. The regulation requires that applicants and persons being redetermined for eligibility be informed that the agency will obtain and use information available to it to verify income and eligibility or for other purposes directly connected to the State plan. This regulation also requires written agreements with other agencies before releasing data or requesting data from other agencies, and requires that all agreements include provisions for safeguarding and limiting the use and disclosure of information.

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

45 CFR § 95.621: Provides that State agencies are responsible for the security of all automated data processing systems involved in administration of HHS programs, and requires establishment of a security plan that includes policies and procedures on physical security of ADP resources, personnel security, and software and data security. Also requires state agencies to conduct biennial review and evaluation of physical and data security operating procedures and personnel practices.

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. HIPAA-covered entities include health plans, and the definition of 'health plan' includes state Medicaid programs.

<u>45 CFR Part 164, Subparts A, C and E</u>: These are the security and privacy regulations governing covered entities' and their business associates' use, disclosure, and safeguarding of protected health information (PHI) and electronic PHI (ePHI). Subpart C (known as the security rule) sets forth administrative, technical and physical standards for protecting ePHI, and Subpart E (known as the privacy rule) sets forth privacy standards for use and disclosure of PHI.

State Statutes and Rules:

RC § 109.85: Authorizes JFS to seek assistance from AG's Office in Medicaid fraud investigations, but does not prohibit county prosecutors from investigating and prosecuting Medicaid fraud.

<u>RC § 173.20:</u> 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 non-public 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 § 339.81: States that any information, data and reports regarding a case of tuberculosis that are furnished to, or procured by, a county or district TB control unit or the Dept. of Health, shall be confidential and used only for statistical, scientific, and medical research for the purpose of controlling TB in Ohio. No physician, hospital or other entity furnishing information, data or reports pursuant to this chapter shall by reason of such furnishing be deemed to have

violated any confidential relationship, be held to answer for willful betrayal of a professional confidence, or be held liable in damages to any person.

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

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 § 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 in 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. 4/6/23.

RC § 3701.74: Allows patients, their representatives, and other authorized persons the right to examine or obtain copies of the patient's medical records from the patient's health care providers. If a health care provider fails to furnish the requested records, the person making the request may initiate a civil action against the health care provider, to enforce their right to access the records. 4/6/23.

RC § 3701.741: Requires health care providers and medical records companies to provide state and county DJFS with one free copy of medical records upon their request. Also says how much copy charges can be. 9/29/13.

RC § 3701.75: Governs use of e-signatures for any health care records maintained by the Department of Health, and requires that each state department adopt a policy on usage.

RC § 3701.9310: Information, data, and records about a decedent, which is collected for use and maintained by the Ohio violent death reporting system including, but not limited to, medical records, coroner investigative records, and laboratory reports, are confidential. This information is also not subject to a subpoena, discoverable, or admissible in civil or criminal proceedings (see 3701.9311). However, the director of Health may adopt rules and establish standards and procedures to make this information available to researchers (see 3701.9312).

RC § 3798.02: For purposes of eliminating barriers to the adoption and use of electronic health records and health information exchanges, the legislative intent in enacting ORC Chapter 3798 is to make state law governing a covered entity's use and disclosure of protected health information (PHI) no more stringent than the HIPAA privacy rule, and to supersede any judicial/administrative rulings that are inconsistent with ORC Chapter 3798.

RC § 3798.03: A covered entity must make PHI it maintains available to the subject of the information or to his/her personal representative, in accord with 45 CFR 164.524, and a covered entity must maintain administrative, technical & physical safeguards to protect the privacy of PHI, in accord w 45 CFR 164.530(c).

RC § 3798.04: A covered entity is prohibited from using or disclosing PHI in a manner inconsistent with 45 CFR 164.502; or without an authorization that is valid under 45 CFR 164.508 &, if applicable, 42 CFR part 2, except as permitted under Subchapter C of Subtitle A of CFR Title 45.

RC § 3798.07: Whenever a covered entity discloses PHI to a health information exchange without a valid authorization, the covered entity must comply with applicable federal disclosure laws for PHI, written requests from the individual or his/her representative, and state laws governing a minor's receipt of medical care and to make his/her own medical decisions. However, Section (B) says that any added requirements in (A) do not supersede certain state laws, rules and codes, which may require either disclosure or confidentiality. So, conflicts between Section (A) and Section (B) are resolved in favor of Section (B). 10/17/19.

RC § 3798.10: Authorizes/requires the Director of the Ohio Department of Medicaid to adopt rules regarding a standard [release] authorization form for the use & disclosure of PHI by Ohio covered entities. A person or government entity can accept a form other than the one the Director prescribes, as long as it meets all the requirements specified in 45 C.F.R. 164.508 and, if applicable, 42 C.F.R. part 2.

RC § 3798.12: Section (A) says that ORC Chapter 3798 supersedes all other ORC sections, OAC rules, guidances, orders and ordinances, when it comes to the confidentiality, privacy, security, or privileged status of PHI maintained in, or transacted or accessed through a health information exchange, EXCEPT for those specified in Section (B).

RC § 3798.13: Requires Ohio's Medicaid Director to adopt rules regarding the criteria a person must meet to be considered a minor, when he/she is mentally/physically disabled and under the age of 21.

RC § 5101.26: Sets out definitions of terms for confidentiality purposes. Effective 9/29/11, 10/01/11 and 9/29/13, various amendments separated "medical assistance recipient" from the definition of "public assistance recipient" by defining "public assistance" as "financial assistance or social services that are provided under a program administered by [ODJFS] or a county agency..." and stating that "Public assistance does not mean medical assistance provided under a medical assistance program, as defined in 5160.01 of the Revised Code..."

RC § 5160.39: 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 the Ohio Department of Medicaid (ODM). ODM must limit its use of information gained from such third parties to purposes directly connected with the administration of the Medicaid program and the child support program authorized by Title IV-D of the Social Security Act. No third party may disclose to other parties or make use of any information regarding recipients of medical assistance that the third party receives from ODM.

RC § 5160.45: Sets out confidentiality requirements for all medical assistance programs and limits disclosures to purposes directly connected with administration of a medical assistance program, and to the recipient, or his/her own authorized representative, legal guardian or attorney, if the recipient's attorney has obtained a release authorization that meets the requirements of RC 5160.46.

RC § 5160.46: Sets out the required elements of a release authorization form allowing the disclosure of medical assistance recipient specific information. See also 45 CFR 164.508(c), which contains 8 elements required in any HIPAA-compliant release, including (a) identifying the information being sought in a specific, meaningful way; (b) providing an expiration date or event that relates to the purpose of disclosure; and (c) informing the individual of her/his/their right to revoke. 9/29/13.

<u>RC § 5160.48:</u> Requires the Medicaid director to set out in administrative code rules procedures for the release of information.

RC § 5162.03: For the purpose of section 1902(a)(5) of the Social Security Act and 42 USC 1396a(a)(5), the Ohio Department of Medicaid is the single state agency for the supervision of the administration of the Medicaid program. As the single state agency, ODM shall comply with 42 CFR 431.10(e) and all other federal requirements.

RC § 5163.40: Healthy Start Program applications must require no more info than is necessary for making Healthy Start eligibility determinations.

RC § 5164.341(E): BCII report on independent Medicaid HCBS Waiver providers is not public and may only be released to subject of check or their representative, Medicaid staff if needed for purposes of program administration, Medicaid department's designee, individual receiving or deciding whether to receive home & community-based services from the subject of the check, and court or other necessary individual involved in a case dealing with a denial or termination of a provider agreement related to the criminal records check, or civil or criminal action regarding the Medicaid program.

RC § 5164.342(H): Report of criminal records check on waiver agency employees and job applicants is not public and may only be released to subject of check or their representative, chief administrator of agency requesting check, Ohio Department of Medicaid staff for program administration purposes, Director of Aging if waiver agency is also a community-based long-term care provider or subcontractor, individual receiving or deciding whether to receive home & community-based services from the subject of the check, and court or other necessary individual dealing with case involving employment, UC, or civil or criminal action regarding Medicaid program.

RC § 5164.756: States that information shared with the Ohio Department of Medicaid by drug companies in relation to determining drug rebates are not public records, and shall be treated as confidential by the Dept.

RC § 5165.88: Provides that, unless required by court order or needed for other limited purposes specified in RC 5165.88, 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; the identity of any individual who provides the department or agency with information about a nursing facility and has requested confidentiality; or any information that would reasonably tend to disclose the identity of any individual described previously. Also says that records containing information concerning the aforementioned persons are non-public records under RC §149.43.

RC § 5302.221: Medicaid estate recovery program administrator must create a form and provide it to Ohio county recorders offices. County recorders must then ensure that a copy of the form is provided to the beneficiary of a transfer on death designation (or the beneficiaries representative) prior to recording the realty transfer. Beneficiaries who indicate on the form that the deceased owner or predeceased spouse were on Medicaid, or who do not know if they were on Medicaid, must submit the completed form to the administrator of the Medicaid estate recovery program. 4/6/17.

OAC Rule 5160-1-32: This rule pertains to "safeguarding & releasing [Medicaid] information". 1/13/17.

OAC rule 5160:1-1-04: This rule pertains to "Medicaid: Income & Eligibility Verification System (IEVS)."

OAC rule 5160-1-08(M): In conjunction with ORC 5160.37, requires Medicaid consumer to notify ODM prior to initiating any action against a liable third party. And, if a Medicaid consumer or individual acting on the behalf of a consumer, requests a financial statement (a claim) from a Medicaid provider for services paid by or billed to ODM, the rule requires the Medicaid provider to (1) require that the Medicaid consumer or representative make the request in writing; (2) notify ODM immediately after receiving a written request, and forward a copy of the request for financial statements to the ODM bureau of claims operations, (3) release the financial

statement to the Medicaid consumer or representative within 30 days of receiving the written request, and (4) put specific language regarding ODM's right of recovery on any records released to either the Medicaid consumer or individual acting on his/her/their behalf. 9/16/19.

OAC rules 5160-45-07 and 5160-45-08: Sets forth the process and requirements for criminal records checks of current and prospective employees of agency and non-agency (or independent) providers of home and community-based services (HCBS). Paragraph (D) of both rules says that reports of any criminal records checks conducted by BCII in accordance with these rules are not public records for purposes of ORC 149.43, and shall only be made available to individuals listed in the rules. 4/1/18.

OAC rule 5101:6-50-07: Allows, when an RC Chapter 119 hearing has been requested, discovery of any matter that is not privileged or confidential and that does not involve an action under RC Chapters 5103 and 5104 (certification of children's residential facilities and child day care licensing).

2. HIPAA: Health Insurance Portability and Accountability Act of 1996 (45 CFR Parts 160 and 164)

HIPAA is a federal law that governs covered entities' and their business associates' uses and disclosures of protected health information or PHI.

<u>45 CFR 160.103</u> defines "covered entity" as health plans, health care clearinghouses, and health care providers that transmit any health information in electronic form in connection with a covered transaction.

45 CFR 160.103 also defines "business associate" as:

- (i) A Health Information Organization, E-prescribing Gateway, or other person that provides data transmission services with respect to protected health information to a covered entity and that requires access on a routine basis to such protected health information.
- (ii) A person that offers a personal health record to one or more individuals on behalf of a covered entity.
- (iii) A subcontractor that creates, receives, maintains, or transmits protected health information on behalf of the business associate.

The Ohio Department of Medicaid (ODM) is considered a "covered entity" as a Health Plan for the Medicaid program, the Children Health Insurance Programs (CHIP) and the Refugee Medical Program (RMP). Among other things, HIPAA restricts the release of protected health information (PHI) possessed by covered entities like ODM to third parties, and requires covered entities to release PHI to the subject of the PHI or her/his/their personal representative upon request. SSA and state DDS (Disability Determination Services) agencies are not covered entities, but health care providers performing consultative examinations (CEs) for SSA and DDS are subject to Privacy Act of 1974 and may be "covered entities". See HIPAA and the Social Security Disability Programs - Information for CE Providers (ssa.gov).

Subsequent to the July 1, 2013 creation of ODM, certain support offices within ODJFS, including the Office of Information Services (OIS) and Bureau of State Hearings, continued to perform services for ODM, and staff within those offices have likely continued to be HIPAA-covered when working on Medicaid-related matters. Moreover, ODJFS and ODM jointly supervise county departments of job and family services in their administration of

the SNAP, TANF and Medicaid programs (which all utilize a statewide database named Ohio Benefits), and most CDJFS's access, utilize and transmit PHI electronically.

Penalties for Non-compliance

HIPAA permits the Department of Health and Human Services, Office of Civil Rights (HHS OCR) to assess criminal and civil penalties for failure to protect PHI (See 42 USC 1320d-5 - 42 USC 1320d through 1320d-9) and civil penalties for failure to release PHI to the subject of the PHI or guardian of the subject of the PHI. See also Section IV of this Manual for applicable penalties.

Release of Information

RC 5160.45(D) and OAC 5160-1-32 specify the conditions under which information regarding Medicaid applicants and beneficiaries may be released. Generally, HIPAA would preempt state law, however under 45 CFR 160.203, state law is not preempted when it is more stringent than the standards and requirements of HIPAA. Federal and state Medicaid laws and regulations are more stringent than HIPAA with respect to the release of Medicaid applicant and recipient information to third parties. CHIPS I and II are under the same restrictions as Medicaid through RC \$5160.45 and RC \$5160.46.

Breach Notification

Each state must include in all contracts, a documented process to report improper use or disclosure of PHI. Notification of a security incident within Ohio Benefits should be immediately reported by the contractor to state staff, who in turn must report it immediately to the CMS Director of Division of State Systems.

Under 45 CFR Part 164, subpart D, HIPAA breach means the acquisition, access, use, or disclosure of PHI in a manner not permitted under subpart E, which compromises the security or privacy of the protected health information.

45 CFR 164.404(b) says that unless notification would impede law enforcement (see 45 CFR 164.412) notice to each individual whose PHI has been unlawfully accessed, acquired, used or disclosed must be made within 60 days. And, under 45 CFR 164.404(c) and (d), the notice must be in writing, include certain standard information, and be sent by first class mail to their last know address or, if agreed upon by the individual, electronic mail. If there is insufficient or outdated contact information, then "substitute notice" is permitted. Phone notice may be used in addition to the aforementioned methods, when the circumstances are urgent and there is an imminent risk of misuse of unprotected PHI.

45 CFR 164.408(c): Requires that covered entities, following the discovery of a breach of unsecured PHI involving fewer than 500 individuals, maintain a log or other documentation of each such breach and, within 60 days after the end of the calendar year, notify the HHS Secretary of all breaches that occurred during the preceding calendar year, as specified on the HHS website. For breaches involving 500 or more individuals, covered entities must notify the HHS Secretary "contemporaneously" with when they notify each individual whose PHI has been, or is reasonably believed by the covered entity to have been, accessed, acquired, used, or disclosed as a result of such breach, which notice must be provided no later than sixty (60) days from the date the breach is discovered (see 45 CFR 164.404(a)). Notification to HHS Secretary and individuals affected by the breach may be delayed if law enforcement notifies the covered entity or business entity that notification would impede a criminal investigation or cause damage to national security (see 45 CFR 164.412).

42 USC 17901 to 17953: Federal laws on Health Information Technology (or HITECH). The HITECH breach notification provisions in 42 USC 17932 (HITECH §13402) are similar to the provisions in 45 CFR 164.404 and 164.408.

Per <u>RC 5160.45</u> and <u>OAC 5160-1-32</u>, ODM is requiring each CDJFS to comply with certain portions of the HIPAA privacy requirements since these agencies have access to eligibility information and PHI for the medical programs cited above. For instance, 45 CFR 164.512(e) requires notice to the subject of the information that a subpoena for their information has been received, and also requires the party in receipt of the subpoena to make reasonable efforts to obtain a qualified protective order prior to release of any HIPAA-protected information. 45 CFR 164.512(f) describes the circumstances under which certain PHI may be disclosed by a covered entity to law enforcement. And, 45 CFR 164.514(b)(2) contains requirements for de-identifying an individual, including not identifying him/her to within the last two digits of his/her zip code (depending on the population size in a particular geographic area). 45 CFR 164.514(d) says that only the amount reasonably necessary to accomplish the purpose of the disclosure may be shared, in order to comply with any lawful disclosure request.

HIPAA security regulations can be found in 45 CFR 164, Subparts A & E, and set standards for the electronic transmission of PHI.

E. Child Welfare

(Adoption/Foster Care/Abuse-Neglect/PCSA/Child Fatality)

Federal Laws and Regulations:

<u>42 USC §671(a)(8)</u>: Requires that all State plans involving foster care and adoption assistance provide safeguards which restrict the use or disclosure of information concerning individuals assisted under the State plan.

42 USC §671(a)(20)(B)(iii): Requires that all state plans have in place safeguards to prevent the unauthorized disclosure of information in any child abuse and neglect registry maintained by the State, and to prevent any such information obtained pursuant to this subparagraph from being used for a purpose other than conducting background checks in foster or adoptive placement cases.

42 USC \$5106a(b)(2)(B)(viii): Federal grants for child protective services require a State plan to be coordinated with a State plan under Title IV, Part B of the Social Security Act (42 USC 621, et seq.), including an assurance (among other assurances) in the form of a certification by the Governor that the State is enforcing a state law, or has in effect and is operating a statewide program, relating to child abuse and neglect that includes 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; child fatality 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 grand jury; and other entities or classes of individuals statutorily authorized by the state to receive such information pursuant to a legitimate State purpose. Last amended 1/7/19.

42 USC \$5106a(b)(2)(B)(x): The state plan required by 42 USC 5106a(b)(1) 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(c)(4)(B)(i): Members and staff of a state-established 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 specific child protection 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 citizen review 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.

<u>42 USC §5106a(c)(6)</u>: Requires that each citizen review panel prepare and make available to the public, on an annual basis, a report containing a summary of the activities of the panel, and recommendations to improve the child protection services system at the state and local levels. Within six months thereafter, the appropriate State agency shall submit a written response to the recommendations.

45 CFR \$205.50: The restrictions set out in this regulation were the same ones that restricted the release of TANF applicant, recipient and former recipient information. This regulation requires that the State plan for financial assistance under Title IV-A restrict the use and disclosure of information concerning applicants and recipients, to purposes directly connected with: (1) the administration of the plan or program; (2) investigations, prosecutions, or criminal or civil proceedings conducted in connection with the administration of any such plans or programs; (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) information to the Employment Security Agency as required by law; (5) audits conducted in connection with the administration of any such plan or program, by a government entity authorized by law to conduct such audits; (6) administration of a state unemployment compensation program; and (7) reporting to the appropriate agency or official information on known or suspected child abuse or exploitation, or negligent treatment or maltreatment of a child receiving aid under circumstances which indicate that the child's health or welfare is threatened.

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 those of the agency administering the financial assistance program. 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.

45 CFR §1355.21: Requires that each state plan for Titles IV-E and IV-B of the Social Security Act provide for safeguards on the use and disclosure of information which meet the requirements contained in 42 USC 671(a)(8), as well as the provisions in 45 CFR §1355.30.

45 CFR §1355.30(p)(3): Requires that safeguarding of IV-E (foster care and adoption) and IV-B (child welfare) information adhere to restrictions set out in 45 CFR §205.50 (see above).

45 CFR §1355.41: Requires states to collect and report information on the characteristics and experiences of a child in foster care, adoption, and guardianship to the HHS Administration for Children & Families (ACF) on a semi-annual basis, in a format specified by ACF.

<u>45 CFR 1356.30:</u> Prohibits ODJFS from approving or issuing a license to a prospective foster or adoptive parent, or from claiming federal financial participation for any foster care maintenance or adoption payments, if ODJFS finds, based on a criminal records check, that the prospective foster or adoptive parent has been convicted of certain types of felonies.

State Statutes and Rules:

RC §109.57(H): Information obtained by a government entity or person under section 109.57 of the Revised Code is confidential and shall not be released or disseminated.

RC §109.5721: Addresses Bureau of Criminal Identification & Investigation (BCII) fingerprint database on individuals employed by, licensed by, or approved for adoption by a government agency, and says that a public office that elects to receive notice of any arrest, conviction or guilty plea of an individual whose name is retained in the fingerprint database, may use that information solely to determine the individual's eligibility for continued employment with the public office, to retain licensure issued by the public office, or to be approved for adoption by the public office, but is otherwise confidential. Fingerprint impressions and BCII results are not transferrable, and individuals must be reprinted when seeking employment with, licensure by, or approval for adoption by a different participating public office or private party. The Ohio Attorney General must promulgate rules for expungement or sealing of records of individuals who are no longer employed, granted licensure, or approved for adoption by the participating public office or private party. (Amended 9/29/2017).

RC §121.22(D)(5): Exempts meetings of a child fatality review board from the Open Meetings (Sunshine law) requirement.

RC §121.37(A)(2)(c): 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)(d): Excludes records pertaining to adoption proceedings from being treated as public record.

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

RC §149.43(A)(1)(f): Excludes certain adoption-related records listed in RC §3107.52(A) from being treated as public record.

<u>RC §149.435:</u> Prohibits law enforcement personnel from disclosing identifying information about a delinquent child or arrestee in a routine factual report, when the child is also an abused child (except in certain limited circumstances).

RC §307.627: Allows child fatality review boards access to summary information from: PCSAs, PCPAs, 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 can also access or request certain confidential abuse and neglect investigatory records that are described in 2151.421(I)(4). The board members 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(E)(2) & (F)(2): Excludes access to the putative father registry by the subject, and to criminal law enforcement investigatory records or trial preparation records by the subject, the subject's guardian, or an attorney authorized by the subject.

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 dependent, any individual or entity listed in RC §2151.14(D)(1), that is investigating the abuse, neglect or dependency, has custody of the child, is preparing a social history for the child, or is providing any services for the child,

may request records concerning the child from a PCSA, PCPA, probation dept., law enforcement agency or prosecuting attorney. Any individual or entity receiving a records request under this statute must provide them, unless release of the information is prohibited by law. If the individual or entity receiving the records request 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, so that the court can rule on whether or not the records can be disclosed.

RC §2151.142: Makes confidential the residential address of each officer 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 §2151.353, RC §2151.412, RC §2151.413, RC §2151.414, RC §2151.415, RC §2151.416, RC §2151.417, RC §2151.421, §§2151.420 to 2151.4234 or another section of the Revised Code and to the residential address of persons related to that officer or employee by consanguinity or affinity. Any such addresses 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 (See RC §2151.142(D)). 5/30/22.

RC §2151.421: Certain professionals (listed in the statute) must report, and others may report, cases of child abuse/neglect to the public children services agency (PCSA) or peace officer in the county in which the child resides, or in which the abuse or neglect is occurring or has occurred. The county PCSA must investigate, in accordance with Paragraph (G), any reports made pursuant to this statute. Except as otherwise stated in (I)(1), a report made under this section is confidential. Paragraph (N) allows sharing of specified information from an investigation (e.g., 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. Paragraph (M) makes mandatory reporters liable for compensatory and exemplary damages to the child for failing to report abuse/neglect of the child; and allows person bringing civil action on child's behalf to use other reports of abuse/neglect in the civil action, provided that identifying information about the alleged child victims and persons making the reports are redacted from the other reports. 5/30/22.

RC §2151.423: Requires PCSA to disclose confidential investigatory information obtained pursuant to RC 2151.421 or 2151.422, to federal, state or local governmental entities, including any appropriate military authority, responsible for protecting children from abuse/neglect. Information disclosed pursuant to this section is confidential and is not subject to disclosure pursuant to ORC sections 149.43 or 1347.08 by the agency to whom the information was disclosed. The agency receiving the information must maintain the confidentiality of information disclosed. 9/29/21.

RC §2151.86: Requires that the appointing or hiring officer of any entity that appoints or employs any person responsible for a child's care in an out-of-home care setting request that BCII conduct a criminal records check on all persons under final consideration for appointment or employment. The statute also requires a BCII check on all prospective adoptive parents and prospective foster caregivers, and all adults residing with them. Records checks must be conducted every four years. The report of any criminal records check conducted by BCII pursuant to this statute is not a public record for purposes of 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 that individual's representative; the entity requesting the criminal records check or its representative; ODJFS, a county DJFS, or a public children services agency; and any court, hearing officer, or other necessary individual involved in a case dealing with the denial of employment, final order of adoption, or foster home certificate.

<u>RC §3107.031:</u> Allows adoptive parents to receive copy of their own home study from the assessor, except for opinions of third parties. It is possible this statute could also be used to withhold or redact any psychological evaluations and other records of a sensitive nature that are provided to the assessor by individuals other than the applicant.

RC §3107.034: Requires adoption agency or attorney who arranges an adoption to ask ODJFS to check the Central Registry of another state, whenever either the prospective adoptive parent or another adult member of the household has resided in another state within five years immediately prior to the date on which a criminal records check is requested pursuant to RC \$2151.86. The adoption agency or attorney arranging the adoption shall review the results of the check prior to finalization of adoption, and consider it in the same way as they would a summary report of a search of SACWIS, created as part of the home study pursuant to RC \$3107.033. The summary report from SACWIS provided pursuant to RC 3107.033 should include a chronological list of abuse and neglect determinations or allegations of which the person seeking to adopt is subject, and in regard to which a public children services agency determined that abuse/neglect occurred, was unable to determine that abuse/neglect occurred, or initiated an investigation that is still pending. The summary report from SACWIS shall NOT contain information about abuse/neglect that the PCSA concluded did NOT occur, or the identity of the person or entity that reported (or participated in the reporting of) abuse/neglect, or information prohibited from being disseminated by, or interfering with eligibility under, CAPTA. The statute also requires ODJFS to check the Ohio Central Registry upon the request of its out-of-state counterparts. 8/14/08.

<u>RC §3107.063:</u> Lists the parties who can request a search of the putative father registry, to whom information can be disclosed, and what to include in the notifications.

RC §3107.17: No person or governmental entity shall knowingly reveal any information contained in a paper, book, or record pertaining to an adoption that is part of the permanent record of a court or maintained by the department of job and family services, an agency, or attorney without the consent of a court. The section also requires that ODJFS prescribe a form that permits individuals identified in the section, to request the court's permission to inspect the social or medical histories of the biological parents, to the extent they are kept in the court's permanent record. 3/20/15.

RC § 3109.051(H): States that a non-residential parent is entitled to access any record related to their child as the residential parent, unless a court determines that such access would not be in the child's best interest, in which case the court shall specify the terms and conditions under which the non-residential parent is to have access. Keepers of child records who fail to comply with the court's order will be in contempt.

RC § 3705.09(G): 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.

RC § 3705.12 through RC 3705.126: Sets out guidelines for having the department of health prepare a new birth certificate for an individual who is adopted. The statute says that upon the issuance of the new birth record, the original birth record shall cease to be a public record. 3/20/15.

RC § 3705.23: Excludes the "information for medical and health use only" section of the birth certificate from the certified copy of the birth record, unless specifically requested by the subject of the birth record, either of the subject's parents or guardian, a lineal descendant, or a federal or state government criminal prosecutor or investigator. The information may also be released pursuant to court order, or by authorization of the state registrar if done in accordance with health department rule.

RC §§5101.13 through 5101.134: Authorizes Statewide Automated Child Welfare Information System (SACWIS) to replace Central Registry and sets forth what and to whom SACWIS data can be disclosed. Expressly makes information contained in or obtained from SACWIS confidential and not subject to disclosure pursuant to sections 149.43 or 1347.08 of the Revised Code. ODJFS and public children services agencies (PCSAs) are permitted to access and utilize SACWIS for

purposes of assessment, investigation and services to children and their families, as well as for purposes permitted under federal or state law and rule. 8/14/08.

<u>RC § 5101.27:</u> Sets out confidentiality requirements for all non-medical public assistance (PA) programs, including OWF, PRC, and child care subsidies. 4/12/21.

RC § 5101.29: When contained in a record held by ODJFS or a county agency, excludes from classification as public records the names and other identifying information regarding: (A) children enrolled in or attending a child day-care center or home subject to licensure or registration under RC Chapter 5104; (B) children placed with an institution or association certified under RC §5103.03 of the Revised Code; (C) persons who make an oral or written complaint to ODJFS or other state or county entity responsible for enforcing RC Chapter 5103 or 5104, regarding an institution, association, child day-care center, or home subject to licensure or registration; and (D) foster caregivers and prospective foster caregivers, including the foster caregiver application and home study. However, the identity of a foster caregiver along with other details must be disclosed, when he/she has had a foster care certificate revoked pursuant to RC Chapter 5103, or is indicted or convicted of any prohibited offense listed in RC §2151.86.

RC §5101.80(E): Requires authorized representative of ODJFS, CDJFS or state agency administering a Title IV-A program, including the kinship permanency incentive program, to have access to all records and information bearing thereon for the purposes of investigations conducted pursuant to RC §5101.80. Authorized representatives of government entities and private, not-for-profit entities administering projects funded with Title IV-A demonstration program funds, shall have similar access for purposes of project-related investigations.

RC § 5153.111(A) & (D): Public children services agency (PCSA) directors must ask BCII to conduct a criminal records check on all prospective employees applying for employment with the agency that would require the employee to be responsible for the care, custody, or control of a child. The report of any criminal BCII check pursuant to this statute is not a public record and cannot be made available to any person other than the applicant who is the subject of the criminal records check or the applicant's representative, the PCSA 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 of employment to the applicant.

RC § 5153.17: County public children services agencies (PCSAs) must keep records of investigations, and of the care, training and treatment afforded children, and all other records required by ODJFS confidential. These records, however, shall be open to inspection by ODJFS, the director of the county department of job and family services, and other persons upon written permission of the executive PCSA director.

RC § 5153.171: Requires the county PCSA director 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 of the intent to prosecute and the determination of what information may be released. The director 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 PCSA director who shall release the information described in RC § 5153.172, except as provided in RC § 5153.173. This statute shields the PCSA director from civil liability or criminal prosecution if the PCSA director releases information authorized by RC 5153.171 in good faith.

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 or purchased for the child by the PCSA, and actions taken by PCSA in response to the report of child abuse and neglect. Names of the parties who reported the abuse/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 5101:1-1-03(B)(6): CDJFS can share with a PCSA the minimum information necessary to fulfill the need for the sharing, when the CDJFS is required to report instances of known or suspected child abuse/neglect of a child receiving OWF or PRC, or when the PCSA needs information to conduct an assessment or investigation of an allegation of child abuse or neglect, as described in OAC rule 5101:2-33-28(G)(2). 2/1/22.

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 disclosing or 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 5101:2-33-21: Makes referrals, assessments, investigations, and provision of services related to child abuse/neglect/dependency reports and families in need of services confidential, including identity of referent/reporter or any person providing information during an assessment or investigation. Also specifies what, under what circumstances and to whom confidential child welfare information may be shared by a PCSA. 8/1/20.

OAC rule 5101:2-33-23(B): Makes all case records that are prepared, maintained or kept by the PCSA confidential, and releasable only in accordance with 5101:2-33-21. 8/15/20.

OAC rule 5101:2-33-28: Requires PCSAs to engage in joint planning and sharing of information with CDJFS in certain circumstances. However, identity of person reporting abuse/neglect or of person providing information during the assessment/investigation, may not be shared with the CDJFS, and any child abuse/neglect information that is permitted to be shared must be kept in a separate file, not in the CDJFS' case record, to help maintain confidentiality. 8/1/20.

OAC rule 5101:2-33-70: Requires ODJFS to establish and maintain Ohio SACWIS in accordance with 42 USC 674(a)(3)(C). The rule also describes the types of data that PCSAs, private child placing agencies (PCPAs) and private non-custodial agencies (PNAs) must enter into Ohio SACWIS and the residential treatment information system (RTIS), and to whom and for what purposes SACWIS data may be accessed and used. Also covers access to and use of SACWIS/RTIS by juvenile court subgrantees of ODJFS for the purposes of Title IV-E reimbursement, and local public entities (LPEs) operating qualified residential treatment programs (QRTPs). 10/1/22.

OAC rules 5101:2-36-03(AA)(6) & 5101:2-36-04(W)(6): Both rules require, in certain circumstances (alleged intra-familial abuse/neglect and specialized assessments and/or investigations), that the PCSA notify the child's non-custodial parent of the receipt of the child abuse/neglect report, as well as the report disposition and case decision. 6/17/18.

OAC rule 5101:2-42-90: Requires PCSAs and PCPAs to share specified child-related information with potential caregivers, prior to placing a child in substitute care or respite care. Also has provisions for sharing information with boards of education for school districts and juvenile courts, and for inclusion in individual child care agreements when children are placed in substitute care settings. 5/1/21.

OAC rule 5101:2-48-09(0)(10): The PCSA, PCPA, and PNA must document that each person seeking adoption approval has completed preservice training prior to approval of the home study, including sharing with the prospective adoptive parent information about the child's commission of a violent crime, prior to placement with the adoptive parent. 2/1/22.

OAC rule 5101:2-48-19: Governs the release and transfer of adoptive home studies by and to PCSAs, PCPAs, PNAs or comparable agencies within and outside of Ohio. 3/1/21.

OAC rule 5101:2-48-20: Governs the release of birth parent and sibling identifying and non-identifying information to an adopted person or the adoptive parents, as well as the release of adoptive parent and sibling identifying and non-identifying information to the birth parent or birth sibling. 2/1/21.

OAC rule 5101:2-48-21: Paragraph (D) requires a child study inventory (CSI) to be shared with a PCSA, PCPA or PNA assisting in the adoptive placement of a child, as well as with the adoptive parents, prior to the adoptive placement. Paragraph (E) states that for newborns placed from the hospital into an adoptive home, the PCSA or PCPA must provide a copy of the CSI to adoptive parents within 30 days of placement. 5/1/21.

OAC rule 5101:2-48-22: Sets out what PCSAs, PCPAs and PNAs must include in an adoptive family case record. 5/1/22.

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. 2/1/21.

OAC rule 5101:6-50-07: When an RC Chapter 119 hearing has been requested, allows discovery of any matter that is not privileged or confidential, except in cases involving actions under RC chapters 5103 and 5104 (foster caregiver, private non-custodial agency (PNA), and private child placing agency (PCPA) certification, & child day care licensing), and records referenced in RC \$5101.29 (identifying information about children enrolled in child day care, children placed in an institution, and persons making complaints about child day care centers or homes), in which instances no discovery is permitted, unless parties agree to it. 1/1/19.

OAC rule 5101:9-9-39: Allows ODJFS to access and use information contained in systems (such as SACWIS) that are controlled or maintained by or for the benefit of ODJFS, for purposes of ODJFS program administration (which includes federal reporting and oversight requirements). Disclosures may be subject to a written agreement, and any release of information shall preserve the confidential nature of it. 8/18/16.

OAC rule 5101:9-22-15: This ODJFS internal management rule defines "personal information" and states that release of personal information is governed by exemptions to public records listed in RC 149.43(A), the Personal Information Systems Act (RC Chapter 1347), and dozens of federal and state laws and regulations like the ones listed in this Manual that make applicant, recipient, and participant information confidential or non-public. The rule also requires that individuals who are authorized to access and use personal information in ODJFS-maintained systems take reasonable precautions to protect the personal information from unauthorized use, disclosure, modification or destruction, and take role-based and job-specific security and privacy training; that aggregate data be masked in accordance with Section III of IPP 3002; that privacy impact assessments be completed for new and existing systems containing personal information, to ensure that the appropriate level of privacy and security measures are in place; and that data breaches and exposures be reported to the chief inspector, chief privacy officer, and chief information security officer. Disciplinary action can be imposed for intentional violations by employees, and questions regarding permissible and impermissible disclosures can be addressed to agency legal counsel. 3/24/22.

F. ADULT SERVICES

State Statutes and Rules:

RC §5101.63(F): Written and oral reports of suspected abused, neglected or exploited adults, and subsequent investigatory records, are confidential and are not considered public records pursuant to RC §149.43. The information shall only be made available upon request to the adult who is the subject of the report, and to legal counsel for the adult. Name and identifying information of person who made the report may be redacted if including that information would create risk of harm to that individual or to the subject of the report. 4/4/23.

RC §5101.61(B): Gives ODJFS director authority to adopt rules governing county departments' implementation of adult protective services, as defined & described in ORC 5101.60 to 5101.71. 9/29/18.

OAC rule 5101:2-20-04(G): Makes adult protective services case records confidential. 10/1/21.

OAC rule 5101:2-20-05: Makes records pertaining to referral, assessment, and investigation of adult abuse/neglect/exploitation confidential, and all information in the statewide adult protective services information system (SAPSIS) confidential. The rule also permits limited disclosures, including for administrative purposes, to the subject of the information and/or his/her legal counsel upon request, and to the court pursuant to a court order and under limited circumstances. 10/1/21.

G. CHILD DAY CARE

State Statutes and Rules:

RC § 5101.29: When contained in a record held by ODJFS or a county agency, excludes from classification as public records the names and other identifying information regarding: (A) children enrolled in or attending a child day-care center or home subject to licensure or registration under RC Chapter 5104; and (B) persons who make an oral or written complaint to ODJFS or other state or county entity responsible for enforcing RC Chapter 5103 or 5104, regarding an institution, association, child day-care center, or home subject to licensure or registration. 1/1/14.

RC § 5104.013(A), (F) & (L): Requires ODJFS to have BCII conduct criminal background checks on owners, licensees, administrators, job applicants and employees of child day-care centers, type A and type B family day-care homes and any adults who reside in the homes, approved child day camps, and licensed preschool and school child programs that provide publicly-funded child care. In-home aides are also required to undergo BCII criminal records checks. In addition, child day camps, other than approved child day camps, shall request that BCII conduct a criminal records check of any individual who applies to for employment and for existing employees every five years. Any BCII report completed pursuant to this statute is confidential and shall not be made available to any person other than the subject of the criminal records check or the subject's representative, the director of job and family services, the director of a county department of job and family services, and any court, hearing officer, or other necessary individual involved in a case dealing with a denial of licensure, approval or certification related to the search. ODJFS shall in turn notify the licensed child day care center, licensed home, approved child day camp, licensed preschool program or licensed school child program of any person who is ineligible for employment. The statute also requires that ODJFS conduct a search of SACWIS for abuse/neglect reports related to the aforementioned parties. BCII checks and SACWIS searches musty typically be conducted every 5 years after the initial check. 10/17/19.

RC § 5104.038: 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 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 ODJFS director 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. 1/1/14.

<u>OAC rule 5101:2-12-09:</u> Requires criminal records checks of owners, administrators, employees, and staff members of child care centers applying for licensure or employment, and every five years thereafter.

OAC rule 5101:2-12-10(C)(3): Requires owners and administrators of licensed child care centers to provide their staff with copies of their own training documentation within 5 business days of their staff member's request, or at the time of separation for records not verified in the Ohio professional registry (OPR). 10/29/21.

OAC rule 5101:2-12-15(D): Requires that licensed child care centers treat as confidential any children's records they collect, including child enrollment and health records, medical statements, and medical/physical care plans, and only disclose them to ODJFS for purposes of administering ORC chapter 5104 and OAC chapter 5101:2-12. In addition, immunization records must be made available for review by the Ohio Department of Health, for purposes of disease outbreak control and immunization level assessment. 10/29/21.

OAC rule 5101:2-12-16(G)(4): If a child is transported from a child care center for emergency treatment by anyone other than a parent, requires that the child's health and medical records accompany the child. 10/29/21.

OAC rule 5101:2-13-03: (G)(5) requires that the county agency provide a copy of the inspection report to anyone who submits a request to the county agency, but only after the county agency has removed all confidential information from the report. Paragraph (I) makes licensing inspection records public. 5/15/22.

OAC rule 5101:2-13-07(C): Requires licensed family child care providers to ensure that all employees and child care staff members create or update their individual profile in the Ohio professional registry (OPR), create an employment record on or before the first day of employment, including date of hire, and update their individual profiles or employment records in OPR within five (5) calendar days of a change, including updates to contact information and positions or roles. Providers must also maintain records of each current employee and child care staff member for at least 3 years after the staff member's departure (including the staff member's scheduled days and hours, group assignments, and end date of employment). Employment records related to staff members are confidential, except when requested by the county agency or ODJFS for purposes of administering RC Chapter 5104 and OAC Chapter 5101:2-13. 10/29/21.

OAC rule 5101:2-13-09: Requires criminal records checks of all staff members, employees, substitutes, and adult residents of licensed type A and type B home providers (collectively referred to as family child care providers) and those applying for a license to become a family child care provider. Records check must be done at time of license application or prior to first day of employment and, every 5 years thereafter. The rule applies to even records of convictions that have been sealed. 9/29/19.

OAC rule 5101:2-13-10(F)(3): Requires family child care providers to give their staff copies of their own training documentation within 5 business days of their staff member's request, or at the time of separation for records not verified in the Ohio professional registry. 10/29/21.

OAC rule 5101:2-13-15(D): Children's records (including attendance and medical records) required to be kept by licensed family child care providers shall be confidential, except they

shall be available to ODJFS and the county agency for purposes of administering RC Chapter 5104 and OAC 5101:2-13. Immunization records shall be subject to review by the Ohio Department of Health for disease outbreak control and immunization level assessment purposes. 10/29/21.

OAC 5101:2-13-26(B): Paragraphs (B)(1) and (B)(2) describe the types of documentation that the county agency must maintain regarding licensed family child care providers; (B)(2) and (B)(3) specify the retention period for those documents; (B)(4) prohibits county agencies from disclosing (a) identifying information about complainants, witnesses and those to whom confidentiality has been reasonably promised, (b) any information, when such information would disclose the identity of one to whom confidentiality has been reasonably promised, and (c) provider medical records that pertain to the provider's condition, when generated in the process of medical treatment; and, (B)(5) through (B)(8) specify what information the county agency must share with the PCSA, law enforcement, provider, and ODJFS. 10/29/21.

OAC rule 5101:2-14-03: Requires criminal background checks of all certified in-home aides. Rule even applies to records of convictions that have been sealed. 10/29/21.

OAC rule 5101:2-14-06(F): Makes all information collected about in-home aides (IHAs) by county agencies confidential, except to ODJFS for purposes of monitoring review of its certification program and investigating complaints involving county agencies, and to the PCSA and law enforcement for purposes of investigating alleged child abuse and neglect. Any information disseminated about IHAs must be documented, including the date of dissemination, to whom, and the reason. 10/29/21.

OAC rule 5101:2-14-07(B)(4): Requires that inspection reports be kept on file at the county agency, and that a copy of the JFS 01642 "In-Home Aide Assurances", with confidential information removed, be released to anyone upon request. 10/20/19.

OAC rule 5101:6-50-07: When an RC Chapter 119 hearing has been requested, allows discovery of any matter that is not privileged or confidential and that does not involve an action under RC Chapters 5103 and 5104 (foster caregiver, PNA, and PCPA certification, and child day care licensing only permit discovery if parties stipulate). Information designated as non-public in RC \$5101.29 is also not discoverable for purposes of an RC Chapter 119 hearing. 1/1/19.

H. CHILD SUPPORT

Federal Laws and Regulations:

42 USC §653: Addresses confidentiality of the Federal Parent Locator System and to whom the information may be released (authorized person, as defined in the statute). Section (j)(8) allows HHS Secretary to disclose employer information from the National Directory of New Hires to state unemployment agencies, for the purposes of UC administration.

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

42 USC §654a: Paragraph (d) requires the ODJFS Office of Child Support (OCS) to establish & implement safeguards for child support automated data systems, to ensure system integrity, accuracy and completeness, and to restrict access to and use of information contained therein. OCS must have written policies that (1) permit access to and use of child support data by state agency personnel, but only to the extent necessary to administer the child support program; and (2) specify the data that may be used for particular program purposes, and the personnel permitted to access such data. Federal law also requires system controls to ensure strict adherence to policies, routine monitoring of access through such methods as audit trails to detect and guard against unauthorized access and use, and training of state and local agency staff and contractors on access restrictions, penalties and security procedures. (45 CFR 307.13 is very similar to this provision).

45 CFR § 235.70: Allows county departments of job and family services to send a copy of the Title IV-A (cash assistance) case record and other relevant information to a CSEA.

45 CFR § 302.35: Requires the state child support agency to maintain a parent locator service (PLS) to provide location information to authorized persons for authorized purposes that are listed in the CFR.

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 pursuant to an agreement with federal office of child support enforcement. Access to FPLS information is limited to child custody or visitation or parental kidnapping 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 § 303.21: Requires state and county child support agencies to safeguard and restrict disclosure of information relating to a specified individual or an individual who can be identified by reference to one or more factors specific to him or her, including but not limited to the individual's Social Security number, residential and mailing addresses, employment information, and financial information. However, (d) says upon request, the ODJFS Office of Child Support may disclose: (1) confidential information to state agencies as necessary to assist them in carrying out their responsibilities under plans and programs funded under titles IV, XIX, or XXI of the Social Security Act (SSA), as well as SNAP including (i) Any investigation, prosecution or criminal or civil proceeding conducted in connection with the administration of any such plan or program; and (ii) Information on known or suspected instances of physical or mental injury, sexual abuse or exploitation, or negligent treatment or maltreatment of a child under circumstances which indicate that the child's health or welfare is threatened; and, (2) information in the state directory of new hires (SDNH), pursuant to sections 453A and 1137 of the SSA for purposes of income and eligibility verification. However, authorized disclosures under (1) and (2) above shall not include confidential information from the National Directory of New Hires or the Federal Case Registry, unless authorized under 45 CFR \$307.13 or unless it is independently verified information. No financial institution data match information may be disclosed outside the administration of the IV-D program and no IRS information may be disclosed, unless independently verified or otherwise authorized in Federal statute. States must have safeguards in place as specified in SSA section 454A(d) and (f).

45 CFR § 303.30: Requires IV-D agency to obtain IV-A or IV-E information not supplied by the agencies holding it (including whether non-custodial parent has health insurance), and provide that information timely, efficiently, and cost-effectively to the state Medicaid agency.

45 CFR § 303.69: Allows U.S. attorneys and federal agents to request information directly from federal parent locator service, for purposes of parental kidnapping or child custody case. Request must be submitted in writing and contain required statements.

45 CFR § 303.70: Requires state child support agencies to have procedures for submissions to the State or Federal parent locator service (PLS) for the purpose of locating parents, putative fathers, or children for the purpose of establishing parentage or establishing, setting the amount of, modifying, or enforcing child support obligations; for the purpose of enforcing any Federal or State law with respect to the unlawful taking or restraint of a child or making or enforcing a child custody or visitation determination as defined in section 463(d)(1) of the Social Security Act (42 USC 663), or for the purpose of assisting State agencies to carry out their responsibilities under title IV-D, IV-A, IV-B, and IV-E programs. Only the central State PLS may make submittals to the Federal PLS for the purposes specified above. The regulation also requires Title IV-D agency director or designee to attest annually to limited uses of federal/state PLS and to whom information will be disclosed; specifies what data elements about parents, non-parents, and putative fathers must be included in submittals; and requires that PLS information be treated as confidential and safeguarded.

45 CFR §307.13: Addresses security and confidentiality for computerized support enforcement systems in operation after October 1, 1997. Requires that State child support agencies have safeguards to protect integrity, accuracy, completeness, access to, and use of computerized support enforcement system data, including written policies regarding access to data by agency personnel and sharing with others. Certain information contained in SETS can be released in connection with SSA Titles IV (including IV-D child support), XIX (Medicaid) and XXI (child health assistance), but the regulation places limits on the disclosure of NDNH, FCR, financial institution and IRS information outside the IV-D program & requires audit trails and staff training.

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 records provided by employers to ODJFS for child support purposes under RC § 3121.894 from being considered as public records.

<u>RC §3107.063:</u> Sets forth the procedure to be used by a biological mother, adoption attorney, PCSA, PCPA, and PNA for requesting that ODJFS search the putative father registry to determine whether a man is registered as the minor's putative father. 3/23/15.

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. Such information is not a public record. 3/22/01.

<u>RC § 3121.84:</u> Requires ODJFS Office of Child Support (OCS) to make comparisons of information in the case registry with information in OCS' birth registry and new hires directory, and to provide reports of information in the registry to other federal and state governmental entities, as specified in state administrative rules and consistent with Title IV-D.

RC §3121.898: New Hire data shall only be used for the purposes set forth in 42 USC 653a, including locating individuals for purposes of establishing paternity; establishing, modifying and enforcing support orders; and verifying eligibility for Title IV-A programs (like OWF and PRC), Medicaid, Unemployment Compensation (UC), Food Assistance (FS) and employment security programs administered by ODJFS.

RC § 3121.899: New hire information shall not be considered public records and shall be accessed, used, and disclosed as specified in ODJFS' administrative rules. ODJFS may share information in new hire reports with any county child support enforcement agency, any county department of job and family services, and ODJFS staff (including Employment Security program staff), but only for purposes specified in RC § 3121.898; and with the Bureau of Workers' Compensation for their program administration.

RC § 3123.89: Requires that ODJFS develop and implement a real time data match program with the state lottery commission and its agents to identify obligors who are subject to a final enforceable determination that they are in default of a child support order, requires county CSEAs to issue an intercept directive to the state lottery commission, including the name and social security number of the obligor and amount of arrearages owed, and requires the lottery commission to deduct the amount of arrearages from the lottery prize award and send it to the ODJFS Office of Child Support. 3/23/22.

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.

RC §3123.93: Allows consumer reporting agencies to obtain certain information maintained by the ODJFS Office of Child Support regarding obligors.

RC § 3123.95 et seq. Authorizes and sets forth requirements for the establishment and use by ODJFS of a poster program, to display photos of obligors who are delinquent in their support payments, for purposes of increasing collections.

RC§ 3123.954: Precludes a county CSEA from providing the address or other personal 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. See also RC § 3123.95 et seq., RC § 3123.957 and OAC rules 5101:12-50-65 and 5101:12-50-65.1, for provisions regarding the office of child support's poster program.

<u>RC § 3125.08:</u> Requires that ODJFS adopt rules that limit access to and use of SETS information to the extent necessary to carry out administration of the child support program; monitoring, identifying and preventing unauthorized access; informing personnel with access of applicable requirements, penalties and security procedures; and establishing penalties for violations.

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

RC §3125.49: Precludes ODJFS Office of Child Support and county CSEA from using social security numbers made available by the Ohio Department of Health's office of vital statistics for any purpose other than child support enforcement.

RC § 3125.50: Prohibits all persons, including county CSEAs, from releasing information concerning applicants for and recipients of child support services, except as permitted under rules promulgated by ODJFS. Statute also prohibits the ODJFS Office of Child Support and county CSEAs from redisclosing 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 home address and income information obtained from the Ohio Department of Taxation, except as provided by rules promulgated by ODJFS.

OAC rule 5101:1-1-03: Makes all information and records collected, received or maintained by ODJFS or a CDJFS concerning an applicant for, or recipient or former recipient of, OWF or PRC (TANF) benefits confidential. The rule describes under what general circumstances the information can be released, the forms needed to authorize information releases, and procedures to follow if information is requested through court process, including immediately notifying the recipient of the request and informing the court of the laws and regs prohibiting disclosure. Also restricts ODJFS and county DJFS use of retirement, survivors and disability insurance (RSDI), supplemental security income (SSI), and benefit earnings exchange records (BEER) information from the Social Security Administration (SSA) to "routine use" and requires approval from beneficiary or SSA for non-routine use. Also requires that disclosures of SSAprovided information to non-ODJFS/CDJFS employees be recorded, even when it is a routine use, and that the records be retained for five (5) years. Federal tax information (FTI) and unearned income information provided by the Internal Revenue Service (IRS) is only to be used for determining TANF and SNAP eligibility and the amount of benefits, and can only be shared with the subjects of the information and their duly appointed representatives with explicit authority to obtain tax return information. Disclosure awareness training for state/county employees with FTI access, standardized record-keeping for requests and disclosures of FTI, and special safeguarding and access limits for SSA and IRS data are also described in the rule. 2/1/22.

OAC rule 5101:9-22-15: This ODJFS internal management rule defines "personal information" and states that release of personal information is governed by exemptions to public records listed in RC 149.43(A), the Personal Information Systems Act (RC Chapter 1347), and dozens of federal and state laws and regulations like the ones listed in this Manual that make applicant,

recipient, and participant information confidential or non-public. The rule also requires that individuals who are authorized to access and use personal information in ODJFS-maintained systems take reasonable precautions to protect the personal information from unauthorized use, disclosure, modification or destruction, and take role-based and job-specific security and privacy training; that aggregate data be masked in accordance with Section III of IPP 3002; that privacy impact assessments be completed for new and existing systems containing personal information, to ensure that the appropriate level of privacy and security measures are in place; and that data breaches and exposures be reported to the chief inspector, chief privacy officer, and chief information security officer. Disciplinary action can be imposed for intentional violations by employees, and questions regarding permissible and impermissible disclosures can be addressed to agency legal counsel. 3/24/22.

OAC rule 5101:12-1-20: Contains definitions of terms used in OAC Rules 5101:12-1-20.1 and 5101:12-1-20.2. The rule allows case participants to request their own information by providing proper identification; requires that individuals other than the case participant (including PCSAs) submit written requests; and mandates that individuals, courts, and agents of the United States with access to case record information (including in SETS) maintain the confidentiality of the information and safeguard it, regardless of the medium in which it is kept. Information can only be disclosed as permitted in child support rules, and often limited to performing functions necessary for carrying out the child support program. 4/1/18.

OAC rule 5101:12-1-20.1: Describes the requirements for the use, protection and dissemination of information that is collected and maintained by the ODJFS Office of Child Support or a county CSEA in the performance of support enforcement program functions. Rule sets forth if, when, to whom, and under what circumstances an individual's case record information (including parent locator service (PLS) and national directory of new hire (NDNH) data) may be disclosed. Paragraph (C) allows non-PLS information to be disclosed for administration of child support, SNAP, OWF, Medicaid and foster care; federal, state, and local audits; and, to report to an appropriate child welfare agency or official, suspected or known instances of abuse, exploitation, or neglect of a child who is the subject of a child support order. 4/1/18.

OAC rule 5101:12-1-20.2: Requires that child support enforcement agencies safeguard confidential participant (obligor and obligee) information received from the Ohio department of taxation and ODJFS Office of Unemployment Insurance Operations. Rule describes the procedures county agencies must follow to safeguard information. 4/1/18.

OAC rule 5101:12-1-22: ODJFS Office of Child Support rule regarding safeguarding of federal tax information (FTI) received from the IRS. See also 26 USC 6103 and IRS Publication 1075. 11/1/22.

OAC rule 5101:12-1-22.1: ODJFS Office of Child Support procedure for conducting county CSEA visits and requiring county CSEA self-inspection, to verify FTI is being properly safeguarded. 11/1/22.

OAC rule 5101:12-10-90(C): States that new hire reports are not considered public records for purposes of section 149.43 of the Revised Code, and that ODJFS may only disclose new hire reports to entities described in RC 3121.898 and 3121.899. 6/1/21.

OAC rule 5101:12-20-10: Sets forth which parties are authorized to obtain an individual's current residential address or place of employment from the Federal Parent Locator Service. Also provides details on how requests must be made and when a court order is required. 1/1/17.

OAC rules 5101:12-50-65 & 12-50-65.1: Authorizes and sets forth requirements for ODJFS Office of Child Support and county child support enforcement agencies to implement poster program, displaying photos of delinquent obligors, to increase collections. 3/1/17.

OAC rule 5101:12-55-10: Financial Institution Data Match (FIDM) is an optional program that allows county child support enforcement agencies to enforce and collect final and enforceable determinations of default from child support obligors' financial accounts. 2/11/19.

I. UNEMPLOYMENT COMPENSATION (UC) BENEFITS & UNEMPLOYMENT INSURANCE (UI) TAX

Federal Laws and Regulations:

26 USC 3301 to 3311: Federal Unemployment Tax Act (FUTA) laws are codified here. 26 USC 3304(a)(16)(C) requires state unemployment program to establish safeguards to ensure that any wage and unemployment compensation information that is shared (including with state Title IV-A and IV-D programs) only be used for authorized purposes.

29 USC § 49b (b): Requires State unemployment compensation (UC) and employment services offices to share data with State offices running TANF, Food Assistance and Child Support programs, such as the amount of UC benefits being paid to individuals, their most recent home address, and if they have refused an offer of employment.

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 money received by the State solely for the purposes and in the amounts found necessary by the Secretary of Labor for the proper and efficient administration of state unemployment compensation law.

These sections have been interpreted by the Department of Labor as requiring that employer, wage, and claim information be treated as confidential and used only for administration of the unemployment insurance tax and compensation program, with few exceptions (see 20 CFR 603.4).

42 USC §1320b-7(a)(5) and (a)(6): 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, only exchanged with agencies authorized to receive such information, & adequately protected against unauthorized disclosure; and that notification is provided to applicants and recipients that information in the system will be shared with other agencies, and reimbursement is made to agencies providing the information for the cost of providing it.

<u>20 CFR Parts 601 to 625</u>: Source of federal unemployment regulations, including Trade Adjustment Assistance in Part 618.

<u>20 CFR §603.2</u>: Defines unemployment terms such as "wage information," "claim information," and "requesting agency."

20 CFR §603.3: Subpart B includes 20 CFR 603.3 through 603.12, and all pertain to implementation of federal UC and FUTA (Federal Unemployment Tax Act) confidentiality requirements, including mandating that states create uniform minimum UC safeguards and data sharing agreements, as outlined in SSA §303 (42 USC 503) and FUTA (26 USC §3304(a)(16)).

<u>20 CFR §603.5</u>: Sets forth exceptions to UC confidentiality that are mostly discretionary. However, the federal exceptions can only be followed if authorized by state law, including RC §4141.21, and disclosure does not interfere with the efficient administration of State UC law.

20 CFR §603.6: Sets forth mandatory disclosures requiring State Unemployment Insurance Agencies (SUIAs) to share certain UC claim and/or UI tax and wage information with federal agencies administering public works/assistance through employment, as well as with food and cash assistance programs and HUD, for purposes of determining eligibility for those programs,

with CSEA for establishing and collecting child support, and with U.S. Departments of Labor and Education for purposes of evaluations conducted under WIOA section 116(e)(4).

<u>20 CFR 603.8</u>: Except as specified in section (b) of the regulation, prohibits state UC agencies from using unemployment grant funds to pay for the cost of making UC information disclosures that are not directly connected to UC program administration. Also requires state UC agencies to seek payment in advance or reimbursement to cover the cost of such disclosures.

20 CFR Part §603.9: Under this regulation, for certain types of disclosures, state unemployment compensation (UC) agencies must require recipients of information to comply with the following measures (and others not listed in this summary) to preserve confidentiality and prevent unauthorized access or disclosure: 1) use information only for purposes authorized by law and consistent with an agreement that meets the requirements of section 603.10; 2) store information in a place physically secure from unauthorized access; 3) store and process electronic information in a way that unauthorized persons cannot obtain it by any means; 4) instruct all personnel with access of the confidentiality requirements and sanctions for unauthorized disclosure; and, have the contracting party sign an acknowledgment that personnel have been so instructed; and (5) maintain an auditable system.

<u>20 CFR 603.11</u>: Requires state unemployment agencies to notify claimants and employers of how their information will be used, with what parties it will be shared, and for what purposes.

<u>20 CFR §§603.20 through 603.23:</u> These regulations describe mandatory Income and Eligibility Verification System (IEVS) disclosures to requesting agencies.

20 CFR §677.175 & WIOA §116(i)(2): Require state workforce education and training programs to use quarterly wage records to measure the progress of the state on performance accountability measures.

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. Amended effective 9/29/13.

RC § 4141.21: Except as provided in RC§4141.162 (IEVS), and subject to RC § 4141.43 (cooperation with certain state, federal and other agencies), information maintained by or furnished to ODJFS or UCRC by employers or employees pursuant to RC Chapter 4141 is for the exclusive use and information of ODJFS and UCRC in the discharge of their respective duties and is not open to the public and cannot be used in any action or proceeding or be admissible in evidence in any action other than one arising under RC Chapter 4141 or RC §5733.42. All of the information and records necessary or useful in the determination of any particular claim for benefits or necessary in verifying any charge to an employer's account under RC §§ 4141.23 to 4141.26, shall be available for examination and use by the employer and the employee involved. 9/30/21.

[In Freed vs. Grand Court Lifestyles, 100 F. Supp. 2d 610 (Dec. 21, 1998), the Federal Court overruled OBES's Motion to Quash in part, and sustained the Motion in part. Three conditions on releasing UC claimant data to the former employer were listed in Freed, in which the claimant had filed an ADA-based discrimination suit against the former employer in federal court:

- (1) There must be a federal questions involved, before release will be required. If it's only a federal diversity issue involving questions of state law, then no disclosure is required, as RC \$4141.21 still applies, and is not abridged by Federal Rule of Evidence 501.
- (2) Only personal information provided to ODJFS by the UC claimant may be released to the claimant's former employer. (Note: The federal court looked at only the facts of this particular case, and the usefulness to the Defendant of UC data (the receipt of which implied that the plaintiff could work) to their defense of an ADA claim (in which obtaining proof of receipt of UC benefits would actually undermine the requesting party's argument that the plaintiff/UC claimant was too disabled to work), and balanced the policy interests served by recognizing state's privilege against the policy interests served by allowing access to the requested information. The facts of other cases may not warrant application of Freed, and/or may not warrant disclosure of UC claimant data.)
- (3) Any discoverable records should be issued under seal, and with written assurances that the documents be maintained as confidential and only be utilized for the limited purposes of defending the federal civil suit filed by the claimant].

[But, see AG Opinion 2010-029, which says JFS may provide BWC with certified copies of UC records, for use in BWC civil and criminal cases, and JFS may allow its representative to testify regarding those records at BWC trial]

RC § 4141.22: No person shall disclose any information maintained by or furnished to ODJFS or UCRC by employers or employees unless such disclosure is permitted by RC §4141.22. Information obtained by ODJFS and UCRC under RC Chapter 4141 that pertains to the transactions, property, business, or mechanical, chemical, or other industrial process of any person, firm, corporation, association, or partnership is prohibited from divulged by current and former employees of ODJFS, UCRC, county family services agencies, and workforce development agencies. 9/30/21.

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, IRS, United States employment service, and the railroad retirement board. Basis for RC 4141.43 and other UC confidentiality statutes lies in SSA §§303(a)(1), (a)(7), (c)(1), (d), (e), (h) & (i). 9/29/17.

RC § 5733.42(E): Financial statements and other information submitted 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. However, ODJFS, the tax commissioner, or the 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 and RC 5729.07. 4/12/21.

OAC 4141-16-01, 4141-16-02, & 4141-16-03: These IEVS-related rules require that ODJFS disclose wage and claim information to authorized agencies under an agreement, when needed by those agencies to verify eligibility for and/or the amount of benefits. The agreement with authorized agencies must include provisions to prevent unauthorized access to and disclosure of confidential information. See also 20 CFR 603.22 and RC 4141.162. 11/12/18.

<u>OAC rule 4141-43-01:</u> Governs the exchange and disclosure of wage, claim, employer, employment and training, and other confidential information to state departments, other governmental agencies, or service providers, and certain nongovernmental agencies for research. All disclosures under this rule must be for purposes of providing and improving employment and training services. This rule strictly prohibits redisclosure of the information received by third parties. 7/27/18.

OAC rule 4141-43-02: Sets out under what circumstances wage, claim, and/or employment and training information furnished to or maintained by ODJFS pursuant to RC Chapter 4141, 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. The rule also permits the sharing of certain information with civil and criminal prosecuting authorities. 4/1/20.

J. WORKFORCE DEVELOPMENT

1. THE WORKFORCE INNOVATION AND OPPORTUNITY ACT (WIOA)

<u>29 USC 3141(i)(2)</u>: Requires that the Office of Unemployment Insurance Operations share wage information for purposes of WIOA performance reporting requirements.

29 USC 3141(i)(3): WIOA requires compliance with the Family Educational Rights and Privacy Act of 1974 (FERPA), which is codified in 20 USC 1232g and the corresponding regulations in 34 CFR part 99. FERPA was enacted to protect student privacy rights in education records, and applies to all public and private educational institutions that receive federal educational funds. FERPA requires safeguards to protect against the disclosure of personal identifying data regarding students.

29 USC § 3245(a)(4): Part (A) of this section requires that certain WIOA records maintained by ODJFS be made available to the public upon request. Part (B) excepts from treatment as public record any information, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, and trade secrets, or commercial or financial information, that is obtained from a person and is privileged or confidential.

29 USC §3341: Nothing in WIOA shall 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); and nothing in WIOA shall be construed to permit the development of a national database of personally identifiable information (PII) regarding individuals who have received WIOA or Title IV services. 7/22/14.

<u>20 CFR 677.175</u>: Requires use of unemployment's quarterly wage information, to the extent permitted under federal and state law, for WIOA performance reporting.

<u>20 CFR 677.230(e)</u>: Governor and designated state agency must facilitate eligible training provider matches with OUIO's wage records for performance reporting.

20 CFR 683.220: Requires recipients and subrecipients of WIOA and Wagner-Peyser funds to have internal control structures and written policies in place that provide safeguards to protect personally identifiable information and other sensitive information. Internal controls include evaluating and monitoring recipient's and subrecipient's compliance with federal and state laws and regulations, including WIOA, and taking prompt corrective action when noncompliance is identified.

29 CFR §38.41: Requires each state WIOA recipient (&/or local workforce development area, per the state plan) to collect and maintain data and records that will help U.S. DOL's Civil Rights Center (CRC) determine whether the recipient is in compliance with the non-discrimination and equal opportunity provisions of WIOA section 188. The system and format used to maintain records must be designed to allow the state recipient and CRC to conduct statistical and other quantifiable data analyses to verify state's compliance. Information and records about applicants, registrants, eligible applicants/registrants, participants, terminees, employees and applicants for employment must be stored in a manner that ensures confidentiality and can only be used for purposes of recordkeeping and reporting to CRC, determining eligibility for WIOA programs and activities, and determining a recipient's compliance with non-discrimination requirements. Each WIOA recipient must also keep (and

submit to CRC upon request) logs of complaints alleging discrimination in relation to WIOA programs or activities. The logs must include complainant names, addresses and other identifying information and complaint details. Any information in the logs that could lead to the identification of a particular individual as having filed a complaint must be kept confidential.

34 CFR § 99.30(a): This is a FERPA regulation and provides that with certain exceptions, "[t]he parent or eligible student shall provide a signed and dated written consent before an educational agency or institution discloses personally identifiable information from the student's education 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; other information that, alone or in combination, would allow a reasonable person to identify the student with reasonable certainty; or information requested by a person who the educational agency reasonably believes knows the identity of the student to whom the record relates. (34 CFR § 99.3).

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

OAC rule 4141-43-01: Allows the use and disclosure of wage information, claim information, employment and training information and employer information maintained by ODJFS for the purpose of providing or improving employment and training. 7/27/18.

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. 4/1/20.

Workforce Innovation and Opportunity Act (WIOA) Section 116(i) (same as 29 USC 3141(i)): Requires state workforce agencies to utilize quarterly wage reports to ascertain their progress on state and local performance accountability measures, and consistent with state law. Requires that DOL make arrangements, consistent with state law, to ensure that the wage records of any state are available to any other state to the extent that such wage records are required by the state in carrying out the state plan or completing the annual performance report described in subsection (d).

OAC rule 5101:11-7-02(D): Makes the identities of those filing or assisting with apprenticeship-related complaints confidential, except for purposes of carrying out EEO requirements and disclosures made with the permission of the person in question. 10/1/20.

2. LABOR MARKET INFORMATION

Any information provided to, or obtained, accessed or used by the Office of Workforce Development's Labor Market Information unit (LMI), is governed by the same confidentiality laws and regulations, and security, retention and destruction policies as the underlying information.

In addition, data LMI receives from the Federal Bureau of Labor Statistics may also be subject to the Confidential Information Protection and Statistical Efficiency Act (CIPSEA) of 2002 (44 USC 3561, et seq., especially 44 USC 3571 and 3572), Privacy Act (5 USC 552a), Nationwide Workforce and LMI System (29 USC 491-2), and Trade Secrets Act (18 USC 1832).

3. EMPLOYMENT SERVICES (Including Wagner-Peyser)

29 USC 491-2: Prohibits officers, employees, and agents of the federal government from (1) using information furnished to them for statistical purposes, for any other purpose; and, (2) publishing or making any media transmittal of information concerning individual subjects that might identify them, directly or indirectly, without the consent of the individual or agency that is the subject of the information. Also makes statistical information about individual subjects immune from legal process, so that it cannot be admitted as evidence, or used for any purpose in any action, suit, or other judicial or administrative proceeding.

20 CFR 653.110: Aggregate data collected pursuant to 20 CFR 653.109, such as the total number of migrant and seasonal farmworkers (MSFWs) contacted through outreach, referred to or placed in jobs, and registered for career services, their median earnings, and the percentage in unsubsidized employment, must be disclosed to the public within 10 business days of the receipt of a written request for such data. However, intra-agency memoranda and reports between ODJFS and DOL-ETA that contain mostly statements of opinion, rather than facts, may be withheld from the public, provided that the requestor is informed of the reason for withholding in writing. And, information and documents may also be withheld if their disclosure would constitute a clearly unwarranted invasion of personal or employer privacy, as long as the rationale for non-disclosure is provided in writing to the requesting party. In Ohio, no personally identifiable information about MSFWs or workforce participants is shared with the general public, on the basis that disclosure of such information would constitute a clearly unwarranted invasion of personal privacy.

<u>20 CFR 655.63</u>: Says that U.S. DOL will maintain a publicly accessible electronic file showing all employers that have applied for temporary non-agricultural labor certifications (for H2B visas), the number of workers requested, the dates filed & decided, and the outcome.

<u>20 CFR 658.411(a)(3)</u>: 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 submission be given to the complainant(s) and the appropriate Complaint System representative.

RC 4141.21: Except as provided in RC 4141.162(IEVS), and subject to RC 4141.43 (cooperation with certain state, federal and other agencies), information maintained by or furnished to the director of ODJFS or UCRC by employers or employees pursuant to RC Chapter 4141 (employment services law) is for the exclusive use and information of ODJFS and UCRC in the discharge of their duties and shall not be open to the public or used in any court in any action or proceeding pending therein, or be admissible in evidence in any action other than one arising under RC Chapter 4141 or RC 5733.42. All of the information and records necessary or useful in the determination of any particular claim for benefits or necessary in verifying any charge to an employer's account under RC sections 4141.23 to 4141.26, shall be available for examination and use by the employer and the employee involved.

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, IRS, United States employment service, and the railroad retirement board.

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

K. STATE HEARINGS

Federal Regulations:

7 CFR 273.15(p)(1) & (q)(5): Requires that hearing decisions related to Food Assistance be made available to the public, provided that names, addresses and other information that would identify household members are kept confidential. This regulation also requires that the Food Assistance/SNAP 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. But, names of individuals who have provided information about the household without its knowledge, and the nature and status of pending criminal cases, must be protected from release. State agencies must provide households with a free copy of relevant portions of the case file, upon their request.

45 CFR 205.10(a)(19): 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 5101:6-5-01(F) & (G): Gives individuals requesting a state hearing and their authorized representative access to their case file, and to any other documents and records the local agency intends to use at the state hearing. The rule also sets out the procedure for requesting and issuing subpoenas during the state hearing process. 4/1/23.

OAC rule 5101:6-7-01(G): Allows the public to inspect all state hearing decisions, subject to applicable disclosure safeguards. The implication of this rule is that an appellant's identity is not subject to disclosure, but the decision itself (with appellant and household members' identifying information redacted) is available as a public record upon request. 4/1/23.

OAC rule 5101:6-8-01(K): Allows the public to inspect all administrative appeal decisions, subject to applicable disclosure safeguards. The implication of this rule is that an appellant's identity is not subject to disclosure, but the decision itself (with appellant/household members' identifying information redacted) is available as a public record upon request. 4/1/23.

OAC rule 5101:6-20-16(H): Allows inspections of administrative disqualification decisions subject to applicable disclosure safeguards. 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 & household members redacted) is available as a public record upon request. 3/1/19.

OAC rule 5101:6-50-07: When RC Chapter 119 hearing has been requested, allows discovery of any matter that is not privileged or confidential and that does not involve actions under RC Chapters 5103 and 5104 (certification of children's residential facilities and child day care licensing). 1/1/19.

OAC rule 5101:9-22-15: This ODJFS internal management rule defines "personal information" and states that release of personal information is governed by exemptions to public records listed in RC 149.43(A), the Personal Information Systems Act (RC Chapter 1347), and dozens of federal and state laws and regulations like the ones listed in this Manual that make applicant, recipient, and participant information confidential or non-public. The rule also requires that individuals who are authorized to access and use personal information in ODJFS-maintained systems take reasonable precautions to protect the personal information from unauthorized use, disclosure, modification or destruction, and take role-based and job-specific security and privacy training; that aggregate data be masked in accordance with Section III of IPP 3002; that privacy impact assessments be completed for new and existing systems containing personal information, to ensure that the appropriate level of privacy and security measures are in place; and that data breaches and exposures be reported to the chief inspector, chief privacy officer, and chief information security officer. Disciplinary action can be imposed for intentional

violations by employees, and questions regarding permissible and impermissible disclosures can be addressed to agency legal counsel. 3/24/22.

L. MISCELLANEOUS

Federal Laws and Regulations:

29 CFR § 825.500(g): 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. If the Genetic Information Nondiscrimination Act (GINA) of 2008 is applicable, records created for FMLA containing family medical history or genetic information shall be maintained in accordance with Title II of GINA (29 CFR 1635.9), which permits information to be disclosed consistent with FMLA confidentiality requirements. And, if the Americans with Disabilities Act (ADA) or the Americans with Disabilities Amendments Act of 2008 (ADAA) 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 and 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(b), (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 forms and 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 and Rules:

RC §9.01: Sets out the standards for copying and preserving records for specified purposes onto different format or medium. Gives the copies the same effect of law as the original record(s). 9/26/03.

RC §9.28: Materials submitted to a public office in response to a competitive solicitation are not public until after the public office announces the award of the contract. 4/6/17.

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 is not a public record under RC §149.43. 11/2/18.

RC §102.03(B): Prohibits current and former public official or employee from disclosing or using, without proper authorization, any confidential information the public official or employee acquired in the course of their official duties, when the confidential designation is warranted and preserving confidentiality is necessary to the proper conduct of government business. Statute is part of revolving door restriction that prohibits former public employees from representing private sector clients in front of their former public sector employer. 4/4/23.

RC §124.88: Records of the identity, diagnosis, prognosis, or treatment of any person that are maintained in connection with the employee assistance program (EAP) are not public records under RC §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. Records may also be disclosed pursuant to court order, if good cause is shown and certain safeguards are in place. 9/29/13.

<u>RC §125.071:</u> Affords some protections for the procurement process until the contract is awarded and the process is completed. 10/25/95.

RC §§ 131.02 & 131.022: Both say private entity to which ODJFS claims are sold, conveyed or transferred, shall be bound by all federal and corresponding state confidentiality requirements concerning the information included in the sale, conveyance or transfer. 9/30/21 and 6/30/06.

RC § 145.27(A), (B) & (D)(4): Sets out what public employee and public assistance recipient information held by the Public Employee Retirement System (PERS) is confidential. 1/7/13.

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 RC Chapter 1719 or 3941) 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 (A)(1) of RC §149.43 and subject to the requirements of division (B) of that statute. The law also states that information directly or indirectly identifying a present or former individual patient or client or her/his diagnosis, prognosis, or medical treatment, treatment for a mental or emotional disorder, treatment for a developmental disability, treatment for drug abuse or alcoholism, or counseling for personal or social problems 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 records is being provided confidential professional services. The law also does not require a nonprofit corporation or association that receives both public and private funds in fulfillment of a contract, to keep as public records the financial records of any private funds expended in relation to the performance of services.

<u>RC § 149.40:</u> States that public offices shall only create: records that are necessary for the proper documentation of the organization, functions, policies, decisions, and procedures of the office; records of essential transactions; and, records necessary for the protection of the legal and financial rights of the state and persons directly affected by the agency's activities.

RC § 149.433: Excludes from treatment as public record infrastructure records of public offices, public schools, and chartered nonpublic schools; infrastructure records of a private entity that is submitted to the public office for use by that public office, if certain criteria described in the statute are met; and security records of public offices. This section is useful for protecting data obtained from surveys and audits, when the data is obtained to improve infrastructure/security. One exception is the notification school boards are required to issue to the public under RC 2923.122(D)(1)(d), informing them that the board has authorized one or more persons to go armed within a school operated by the board, whenever such authorization is given. 9/12/22.

RC § 149.434: Requires that each public office maintain a database or list of names of public officials and employees elected to or employed by that public office, and that such information be made available to the public upon request. 9/30/21.

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 RC §149.43.

RC §§ 1333.61 through 1333.69: These statutes define and preclude the release of trade secrets. If records in the possession of a public office are marked as trade secret, and are the subject of a records request, party making assertion may need court injunction - RC §1333.65.

RC §1347.12: Sets forth procedures for public entities when they become aware of electronic security breaches. See also definitions in RC §1347.01, AG's investigatory authority in RC §1349.191, and penalties in RC § 1349.192). 9/29/15 & 2/7/06.

RC § 4701.19(B): Exempts from treatment as public records statements, records, schedules, working papers, and memoranda made by a certified public accountant or public accountant incident to or in the course of performing an audit of a public office or private entity. However, reports submitted by the accountant to the client are not exempt from treatment as public records. 3/30/99.

<u>RC §5101.46(D):</u> Requires ODJFS to prepare a report every federal fiscal year on the use of Title XX social services grant funds, and to make it available for public inspection. 10/12/16.

OAC 5101:9-9-38: This county electronic data usage rule prohibits county family services agencies (CFSAs) from downloading, matching, scraping or extracting data or data elements from any ODJFS system where the data owner is the Internal Revenue Service, Social Security Administration, or other federal or state entity, without first obtaining express written permission from the data owner. ODJFS can only authorize the download, scrape or extract of data where ODJFS is the data owner. Division (C) states that a CFSA employee may download, match, scrape or extract data from ODJFS systems, including SETS, Ohio Benefits, SACWIS, OWCMS, and CCIDS, if it is directly related to the employee's job functions or duties, but only if such job functions or duties are directly related to the administration of a program the county agency is administering for ODJFS. Division (D) describes the process for obtaining ODJFS approval for data usages not covered by Division (C), including submitting a data request to the ODJFS deputy director for the program responsible for the data, completing an ODJFS Privacy Impact Assessment form, assisting in drafting a data sharing agreement when needed, and obtaining ODJFS Legal and Office of Information Services review and approval. 11/1/20.

IV. PENALTIES FOR WRONGFUL WITHHOLDING OR DISCLOSURE

The following is a list of federal and state laws that impose criminal penalties and civil liability for improperly disclosing records that are required to be kept confidential, or withholding records that are required to be made available to the public.

Federal Laws 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 that administers programs (such as ODJFS) violate both state and federal confidentiality laws, it is possible that some federal penalty may attach.

<u>5 USC §552(a)(4)(B)</u>: On receipt of a complaint, gives federal district court jurisdiction to enjoin an agency from withholding records, and to order production of records improperly withheld from the complainant. Prior to making a determination, the court must examine the records in camera, and must give substantial weight to the agency's affidavit concerning technical feasibility and reproducibility. 6/30/16.

<u>5 USC § 552a(g)(1) and (i)</u>: A person may bring a civil action in federal court 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 willfully discloses confidential information. The penalty if convicted is a fine of not more than five thousand dollars (\$5,000). 12/19/14.

<u>5 USC §552a(g)(3) & (4)</u>: An individual may seek a court injunction to stop an agency from withholding agency records that pertain to the individual, and to order the production of any records improperly withheld. The court may also hold the government liable and assess reasonable attorney's fees and costs for intentionally or willfully failing to maintain accurate, relevant, timely, and complete records, or for maintaining records in a manner that adversely affects the individual. 12/19/14.

<u>18 USC 1905</u>: Permits removal from employment and imposition of fines and/or imprisonment for unauthorized disclosure of confidential information (including information relating to trade secrets, processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association; or any income return), obtained by a federal employee during the course of his/her/their employment.

42 USC § 1320d-5: Imposes penalties ranging from \$100 to \$1.5 million for HIPAA violations, depending on whether or not the violation was willful and whether or not it was corrected. Penalty can be waived if HHS Secretary finds that failure to comply was not due to willful 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 prison 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 prison.

42 USC § 5106a(c)(4)(B)(ii): Requires each state that establishes a citizen review panel to establish civil sanctions for citizen review panel members and staff who disclose to any person or government official any identifying information about any specific child protection case, or who disclose information to the public without statutory authorization.

State Statutes and Rules:

RC §124.341 & RC §4113.52: Together, these statutes comprise the Ohio Whistleblower Protection Act, which protects state employees from disciplinary action when they report violations of state or federal statutes, rules or regulations, or the misuse of public resources. See also RC §5104.10 for whistleblower protections related to child care.

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 or copying at all reasonable times during regular business hours; may file a complaint in the Ohio court of claims or an Ohio common pleas court, or commence a mandamus action to compel compliance, and receive reasonable attorney's fees.

RC § 307.629(D): Whoever permits or encourages the unauthorized dissemination of any information, document, or report presented to a child fatality review board, any statements made by review board members during meetings of the review board, any work products of the review board, and child fatality review data submitted by the child fatality review board to the department of health or a national child death review database, other than the report prepared pursuant to RC §307.626, is guilty of a misdemeanor of the second degree. 4/3/23.

RC § 1347.10: A person who is harmed by the use of personal information that relates to him or her that is maintained in a personal information system, may recover damages in a civil action from the person who intentionally: maintains inaccurate, irrelevant, incomplete or untimely information; uses or discloses the personal information in a manner prohibited by law; supplies, uses or discloses false information; or denies to the subject of the information 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 her/his 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.

RC § 1347.15(G) & (H): Paragraph (G) allows a person harmed by an ODJFS or other state employee's violation of the state's data access rule (which for ODJFS is OAC Rule 5101:9-22-16) to bring an action in the court of claims against any person who directly and proximately caused the harm. In addition Paragraph (H) prohibits state employees from knowingly accessing, using or disclosing confidential personal information in a manner that violates federal/state law or rule; prohibits state agency's from employing any individual who has been convicted of a data confidentiality violation; and affords whistleblower protection (under RC §124.341) to coworkers who report violations of state employee data access, use and disclosure laws. 4/7/09.

RC § 1349.192: Allows court to impose civil penalties and to issue a temporary restraining order (TRO) and injunctive relief, for breaches of security that occur in state agencies, when the court determines the state failed to comply with RC §1347.12. 2/17/06.

RC § 1347.99: A public official, public employee, or other person who maintains, or is employed by persons who maintain, personal information systems for a state or local agency, who purposely refuses 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) develop and follow procedures to maintain information with the accuracy, relevancy, timeliness, and completeness needed to assure fairness in any determinations that are based on the information; (3) take reasonable precautions to protect the information from unauthorized modification, use, disclosure or destruction; (4) collect, maintain and use only personal information that is necessary and relevant to the functions the agency is required or authorized to perform, and eliminate personal information from the system when no longer needed or relevant for those functions; (5) inform a person supplying information of the other agencies or organizations that have access to information in the system; (6) permit the subject of the information in the system the right to inspect her own information, subject to certain exceptions; (7) inform the subject of the types of uses made of personal information, including the identity of those granted system access; or (7) withhold information from the subject when a physician, psychiatrist or psychologist determines that disclosure would have an adverse impact on the subject of the information, is guilty of a minor misdemeanor. Paragraph (B) states that anyone who violates RC \$1347.15(H)(1) or (2), by knowingly accessing, using, or disclosing confidential personal information in a manner prohibited by law, is guilty of a first degree misdemeanor. 4/7/09.

RC § 2151.99(A): Whoever violates the non-disclosure provisions of RC §2151.421(I)(2), 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 or records of arrests or custody of children (other than as provided in RC §2151.313(B) and (C)) a fourth degree misdemeanor. Under (A)(2) and (C)(2),

the penalty for any mandated reporter who fails to report abuse/neglect, when that mandated reporter is also providing direct care or supervision for the child, or who is a member of the same church, religious society or faith as a cleric who is known to have committed abuse or neglect, is a first degree misdemeanor. 6/11/21.

<u>RC § 2913.04(B) and (G)</u>: Prohibits persons, by any manner or means, from knowingly gaining access to, attempting to gain access to, or causing access to be gained to any computer, system, network, telecommunications device/service, or information services without the consent of the owner, or beyond the scope of the owner's express or implied consent. Violations can be fifth, fourth, third or second degree felonies, depending on the extent of harm. 3/23/18.

<u>RC § 2913.42</u>: No person without privilege to do so, and with purpose to facilitate or perpetrate fraud, shall falsify, destroy, remove, conceal, alter, deface, or mutilate any writing, computer software, data, or record; or utter any writing or record knowing it has been tampered with. Violations can be 1st degree misdemeanors up to 3rd degree felonies. 9/30/11.

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 § 3107.99: Whoever violates RC 3107.17(B)(1) is guilty of a 3rd degree 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 (e.g., 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. 3/22/01.

RC § 3125.99: Whoever violates RC §3125.50 (which prohibits disclosure of information concerning obligors and obligees receiving Title IV-D support enforcement program services) shall be fined not more than \$500 or imprisoned not more than six months or both. 3/22/01.

RC § 3701.244: A person or agency that knowingly violates RC §3701.243 (confidentiality of HIV testing info) may be found liable in a civil action brought by the individual harmed by the disclosure, and may be ordered to pay compensatory damages and attorney fees.

RC § 4141.22: Disqualifies individuals from holding any appointment or employment with ODJFS, a county family services agency, or a workforce development agency, if they disclose unemployment information in a way not permitted under RC 4141.21 or 4141.43.

<u>RC § 4141.99</u>: Whoever violates the disclosure restrictions 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, 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 personnel 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. 12/31/17 & 9/29/11.

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

RC § 5101.99: Whoever violates the provisions of RC 5101.27(A) (release of public assistance recipient information without authorization) is guilty of a 1st degree misdemeanor. And, whoever violates the SACWIS & SAAPSIS confidentiality provisions in RC 5101.133 and RC 5101.631(C)(2), respectively, and adult abuse/neglect reporting requirement in RC 5101.63(A), is guilty of a 4th degree misdemeanor.

<u>RC § 5160.99:</u> Whoever violates the provisions of RC § 5160.45(B) (release of medical assistance recipient information without statutory authorization) is guilty of a 1st degree misdemeanor.

OAC rule 4141-43-01: Permits the director of ODJFS to prohibit future exchange or disclosure of information to a state department, governmental agency, or other requesting party (or to any of its employees) if the director finds that wage, claim, employment and training, or employer information was redisclosed while in the custody of that party/individual.



Ohio Department of Job and Family Services
Office of Legal & Acquisition Services
30 East Broad Street, 31st Floor
Columbus, Ohio 43215-3414

Telephone: 614-466-4605 FAX 614-752-8298 e-mail: <u>legal@jfs.ohio.gov</u>

Internet: https://jfs.ohio.gov

Intranet: https://ohiodas.sharepoint.com/sites/JFS-Beacon

IPP. 8101.Requests for Public Records

October 26, 2021 - Reviewed January 25, 2019 - Revised February 14, 2003 - Original

I. PURPOSE/REASON:

- A. To inform Ohio Department of Job and Family Services (ODJFS) employees of the procedures for responding to requests for public records.
- B. Ohio's public records laws require that ODJFS make available to the public any records created and maintained in the ordinary course of business, unless specifically exempted by state or federal law. The Public Records Act is intended to keep citizens better informed, which in turn is intended to foster better government and public policy.

Note: Individuals who are denied all or portions of records must be informed of the legal basis for that denial or redaction. If the request is in writing, the explanation of the denial or redaction must also be in writing. See section VI. D. for additional details.

II. REFERENCES/AUTHORITY:

A. REFERENCES

Note: Ohio Revised Code (ORC) and Ohio Administrative Code (OAC) references can be accessed at http://codes.ohio.gov/

- 1. ORC Chapter 149 and Chapter 1347
- 2. ORC 5101.02
- 3. ORC 5101.13 et seq., 5101.99, 5164.756
- 4. ORC 3107.17, 3107.99
- 5. ORC 3121.898, 3121.899, 3121.99, 3125.08, 3125.50 and 3125.99
- 6. ORC 4141.162, 4141.21, 4141.22 and 4141.99
- 7. OAC 5101:1-1-03
- 8. OAC 5160-1-32, 5160:1-1-04
- 9. OAC 5101:9-22-15

- 10. OAC 4141-43-01 et seq.
- 11. 7 USC 2020(e)(8), 7 CFR 272.1 (c), and OAC 5101:4-1-13
- 12. 42 CFR 431 Subpart E; and, 45 CFR Parts 160 and 164
- 13. 45 CFR 205.50

B. AUTHORITY

- 1. This policy is established by order of the Director, ODJFS, hereinafter referred to as Director.
- 2. Per ORC 5101.02, all duties conferred on the various work units of the department by law or by order of the Director shall be performed under such rules as the Director prescribes and shall be under the Director's control.
- 3. This policy is also established pursuant to ORC 149.43 (E) (1), which requires each public office to adopt a public records policy for responding to public records requests.

III. SUPERSEDES:

ODJFS IPP 8101 dated January 26, 2011

IV. SCOPE:

This procedure applies to all ODJFS employees and offices handling records.

V. **DEFINITIONS:**

- A. RECORD: Any document, device, or item, regardless of physical form or characteristic, created or received by or coming under the jurisdiction of ODJFS, serving to document the organization, functions, policies, decisions, procedures, operations, or other activities of ODJFS. This means that records can be in the form of electronically maintained data, including e-mail and scanned documents.
- B. PUBLIC RECORD: Any record kept by ODJFS, unless the record or a portion thereof is exempted from release by the provisions in ORC Section 149.43, or another state or federal law. In addition, certain records, or portions thereof, are made expressly confidential by state or federal law. If a record is neither exempt from disclosure nor made expressly confidential by law, then it must be made available for inspection or copying—whichever the requester chooses—within a reasonable time after the request is made. If a portion of a public record is confidential or exempt, only that portion may be redacted (blocked out with a black marker or electronic redaction software, so that it is illegible) from the

record. Ohio law requires that the remainder of the record be disclosed in response to a proper public records request. Failure to release a public record can result in court action and an order compelling ODJFS to release the record, as well as to pay court costs, attorney's fees, and/or statutory damages to the requester.

C. RECORDS THAT ARE NOT PUBLIC RECORDS

- 1. ORC 149.43 provides that certain records are exempt from treatment as public records. Appendix B contains a list of many of those exempt records. Exempt records are not required to be released to the public, but are also not prohibited from being released to the public. It is within the public offices' discretion whether or not to release exempt records.
- 2. ORC 149.43 provides that records designated as confidential or precluded from release by state or federal law are not public records. Such "confidential" records include public assistance recipient data (ORC 5101.27), unemployment compensation claim data (ORC 4141.21), child support obligor and obligee information (ORC 3125.50), and adoption records (ORC 3107.17).
- 3. Some records that are listed as exempt under ORC 149.43(A) are also made confidential by other statutes. Once a record is made confidential, the public office no longer has discretion to release that record to the general public. Release of confidential records must be made in accordance with federal and state laws and regulations.
- 4. "Personal information" is defined in ORC 149.45(A) as an individual's social security number; state or federal tax identification number; driver's license number or state identification number; checking or savings account number; debit or credit card number; or money market, mutual fund account, or other financial or medical account number.

VI. POLICY/PROCEDURES APPLICABLE TO ALL OFFICES:

A. PUBLIC RECORDS MANAGERS/LIAISONS

1. Each ODJFS office that creates/maintains public records shall appoint a primary and secondary public records manager/liaison to ensure that public records are located, gathered, reviewed, redacted, and provided in a timely manner. Since some ODJFS offices are much larger than others and require the use of bureaus, sections, and other subdivisions in order to adequately manage that office's functions, these offices may, at their Deputy Director's discretion and with the approval of the Office of Legal and Acquisition Services (hereafter also "Legal Services"), designate more

- than one set (a set being one primary and one secondary) of public records managers/liaisons.
- 2. Each ODJFS office shall provide the names of the primary and secondary public records managers/liaisons to Legal Services.
- 3. Whenever any office within ODJFS receives a subpoena or court order for records, the subpoena or court order must be submitted immediately to Legal Services, which will coordinate and monitor any necessary actions in order to ensure timely responses to subpoenas and court orders. Legal Services will work with the public records manager/liaison in the office that creates/maintains the records to determine what records exist that would be responsive to the request and to determine what records can be released.
- 4. Records requests that do not come in the form of a subpoena or court order shall be submitted to the public records manager/liaison of the office that creates/maintains the records being requested. If the records are maintained by more than one office, then the affected offices shall work together and designate one public records manager/liaison to serve as a single point of contact for the party making the records request. In certain circumstances, including but not limited to instances when the records request is sent by a law firm or attorney, the Office of Legal and Acquisition Services may serve as the single point of contact. Designation of the point(s) of contact shall be made on a case-by-case basis after internal discussion and, when needed, with the assistance of the Office of Legal and Acquisition Services. See also SECTION VII for handling media, legislative, personnel, and other routine records requests.
- 5. Each office shall periodically review and update the portion of the Department's records retention schedules that apply to that office and ensure that the updated version is made available to the public.

B. RECORDS MAINTENANCE AND RESPONDING TO REQUESTS FOR PUBLIC RECORDS

- 1. ORC 149.43(B) requires ODJFS to make <u>public</u> records available to any person requesting the records. Public records must be made available for <u>inspection or copying</u>, whichever the requester chooses.
- 2. ODJFS offices must organize and maintain public records in a manner that the public records can be made available for inspection or copying in accordance with this procedure. All questions regarding proper records maintenance procedures must be directed to the Records Management Section of the Office of Employee and Business Services.

- 3. An office may direct the requester to the ODJFS internet site if the record is available online. However, if the requester declines accessing the record online, the office that maintains the record is required to provide the record via paper or, if feasible and available, other record-keeping medium routinely utilized by that office. Any costs associated with the medium in which the record is delivered or made available to the requester can usually be charged to the requester (i.e. cost of compact disc or paper copies).
- 4. If a records request is ambiguous or overly broad, or the ODJFS office responding to the request cannot reasonably identify what records are being sought, the office may deny the request but must also give the requester an opportunity to revise/clarify the request by informing the requester of the manner in which the records are maintained and accessed by that office.
- 5. If a request is made for what is clearly considered a public record, then the requesting party need not provide his/her/its request in writing, or identify himself/herself/itself, or specify the intended use of the records. However, after first explaining to the requester that he/she/it does not need to (1) make the request in writing, (2) identify himself/herself/itself, or (3) specify the intended use of the information being requested, the ODJFS office responding to the request may ask for all three of the aforementioned items, as long as the office also conveys to the requester that having the aforementioned three pieces of information may enhance ODJFS's ability to identify, locate, and deliver the requested records.

C. SAFEGUARDING CLIENT CONFIDENTIALITY

- 1. ODJFS employees must be alert to issues regarding confidentiality to ensure that information precluded from release by state or federal law is not released.
- 2. The ODJFS office or employee must first determine if the requested records are confidential or otherwise precluded from release pursuant to federal/state confidentiality laws and rules. See ODJFS's Public Records and Confidentiality Laws e-manual for a detailed list of applicable laws and regulations.
- 3. Legal Services regularly updates the ODJFS Public Records and Confidentiality Laws manual, which can be found online at the eManuals website and provides information regarding public and confidential records. ODJFS offices may use that manual as a reference but should contact Legal Services whenever there is doubt concerning the confidentiality of information held by ODJFS.

- 4. If a request is received for data that is expressly made confidential by state or federal law, then the identity of the requesting party must be verified (i.e. written request with requester's signature, and legible copy of requester's driver's license, or requester's attorney's written request on attorney letterhead, signed by the attorney, along with a release authorization from the client) prior to release. With confidential data, in many instances the intended use of the records is also relevant and must also be ascertained prior to any release.
- 5. In addition, other than to the subject of the information, or pursuant to a court order or release authorization from the subject of the information, any personal information (as defined in Section V.C. above) maintained by ODJFS must be redacted or withheld from any records that are disclosed in response to a records request. Particular care must be taken to redact or withhold an individual's social security number, driver's license number, and financial account information.

D. DENYING ACCESS TO OR COPIES OF RECORDS

- 1. Records requests that are submitted in writing must be denied in writing. Verbal requests need not be denied in writing.
- 2. ODJFS employees may deny access to or copies of records only when permitted by state or federal law.
- 3. When a portion of the record is confidential, the ODJFS employee is required to redact the confidential information and make the remaining portion of the record available for public inspection and duplication. All redactions must be made plainly visible, meaning that it must be clear **where** any redaction has been made (via use of a black marker or its electronic equivalent), but **not what** precisely has been redacted.
- 4. Any denial of access to, or copies of, public records requires prior approval of Legal Services. When an ODJFS employee believes a request for access to or copies of records should be denied because of provisions in state or federal law, the employee must contact Legal Services with a written description of the requested records and a specific explanation of the reasons for denying access to or copies of records. If Legal Services' approval for redacting or withholding information or records has been requested and obtained in one instance, approval from Legal Services for each and every similar or identical subsequent request is not required, absent a change in law, regulation, policy or circumstances since the time of Legal Services' prior approval. However, an ODJFS

- employee may always request assistance and approval from Legal Services, even when it is not required.
- 5. The ODJFS employee must tell the requester if information has been redacted from the record if the redaction is not obvious from the appearance of the record.
- 6. If the request has been denied, or if redactions have been made, the ODJFS employee must tell the requester the reason or reasons, including legal authority, for the denial or redaction. If the requester's original request was in writing, the reason or reasons for the denial or redaction must also be issued in writing. Whenever the program area or office is unclear about the legal authority for denial or redaction of records, Legal Services will assist in identifying that legal authority.
- 7. Unless specifically authorized by state or federal law, ODJFS offices cannot deny a person access to public records even if the person refuses to disclose his or her name.

E. REQUESTS FOR ACCESS TO INSPECT PUBLIC RECORDS; DOCUMENTATION

- 1. In response to a request for access to public records, ODJFS is required to promptly prepare and make available for inspection to any person at all reasonable times during regular business hours all public records that are responsive to the request.
- 2. In order to help track public records requests, the ODJFS office that maintains the record(s) may, to the extent possible, document the following:
 - a. The name of the person requesting the record inspection, if available (note that for public records as defined heretofore, the requester is not required to identify herself);
 - b. whether the request was made in writing, and if so, the method of delivery (e.g., hand-delivered, certified mail, electronic mail, etc.);
 - c. a description of records requested;
 - d. the request date; and
 - e. the date records were either made available for inspection or that access was denied.

- 3. Each office must establish procedures to ensure that the security of all records is maintained during public inspection. Without the approval of the Office of Legal and Acquisition Services, original records <u>cannot</u> be removed from the department.
- 4. If the person requesting access to inspect public records requests copies of any or all such records, the ODJFS employee must follow the procedure for requests for copies of public records outlined below.

F. REQUESTS FOR COPIES OF PUBLIC RECORDS; DOCUMENTATION; COSTS

- 1. ODJFS is required to provide copies of public records or those portions of records containing public record information within a reasonable time of the request for copies. Reasonableness depends on the volume of documents requested, their location, and the necessity for any review, redaction or legal analysis. The requester may specify that the copies be made on paper, in the medium upon which the record is kept, or upon any other medium the office determines the record can reasonably be duplicated as an integral part of the offices' normal operations.
- 2. A request for public records may be written or oral. Due to the detail of the information requested or due to a high volume of requests, ODJFS offices may ask individuals to submit their requests in writing to enable ODJFS to respond expeditiously, but the office must make clear to requesters that their requests are not required to be in writing. ODJFS cannot refuse to supply public records solely on the basis that the request was made verbally, rather than in writing.
- 3. If the ODJFS office responsible for maintaining a record receives a records request from an individual or entity for more than ten records in one month, the number of records that the office will transmit by United States mail to the requesting party may be limited to ten per month, unless the requesting party certifies to the office in writing that he/she/it does not intend to use or forward the requested records, or the information contained in them, for commercial purposes. The concept of commercial purposes shall be narrowly construed and 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.
- 4. In order to help track public records requests, ODJFS offices providing copies of public records may, to the extent possible, document the following: the name of the requester, if available, the request date, whether the request was made in writing, and if so, the method of delivery (e.g., hand-delivered, certified mail, electronic mail, etc.), records description, and date the records were provided or denied.
- 5. ODJFS may charge the requesting party the cost of providing copies as follows:
 - a. charges for photocopies of paper records are five cents per page plus (1) postage and packaging expenses if the copies are mailed by United States mail, or (2) the cost of transmission if the copies are transmitted by other than United States mail (e.g., FedEx);
 - b. charges for computer records, including the actual time charges for online computer access and any other actual costs excluding staff time; or
 - c. if the records or information are provided using another type of medium, charges for actual costs of the copying excluding staff time.
- 6. Charges for costs may be waived at the discretion of a Deputy Director. Some factors in determining whether to waive cost include the ability of the requester to pay, public interest in receiving the records, and ease of providing the records.
- 7. Although state statute allows ODJFS to obtain payment in advance for the anticipated cost of copying, storing and transmitting records (i.e. \$.05 per page or the cost of a compact disc), any ODJFS office that is considering assessing such a cost should consult with Legal Services beforehand.
- 8. Each office must establish procedures to collect charges for the provided copies, including invoicing procedures for payment of such charges after distribution of the records.
- 9. Each office must follow guidelines established by the Office of Fiscal Services regarding the receipt of cash and checks.

VII. ROUTINE REQUESTS FOR SPECIFIC TYPES OF RECORDS:

- A. Certain ODJFS offices provide specific types of records or obtain records for specified persons as a function of that office (see Sections VII B through VII D).
 - 1. Each office providing records is responsible for compliance with all rules and laws relating to client confidentiality and the exemptions contained in this procedure.
 - 2. Offices must comply with the provisions regarding denial of access to the records and with charging the requesting party for any copies of the records.

B. MEDIA AND LEGISLATIVE REQUESTS FOR PUBLIC RECORDS

- 1. Requests for access to and/or copies of public records made by the news media are immediately referred to the ODJFS Office of Communications, which is responsible for obtaining the records from the appropriate ODJFS office and providing access and/or copies to the media person making the request while maintaining the confidentiality of any information or records that are prohibited from disclosure to the general public under federal or state law.
- 2. Requests for access to and/or copies of public records made by legislators are referred to the ODJFS Office of Legislation, which is responsible for obtaining the records from the appropriate ODJFS office and providing access and/or copies to the legislative person making the request while maintaining the confidentiality of any information or records that are prohibited from disclosure to the general public under federal or state law.
- 3. If there are any questions concerning the release of any information contained in a record, the Office of Communications or Legislation, along with the appropriate ODJFS program or support office, shall consult with the Office of Legal and Acquisition Services prior to release.
- 4. The Offices of Communications and Legislation may waive copying charges for legislators, other governmental agencies, and the media.

C. REQUESTS FOR PERSONNEL RECORDS

1. All requests for access to and/or copies of personnel records are referred to the ODJFS Office of Employee and Business Services, which is responsible for responding promptly to the requests.

- 2. Prior to the release of any documents, the Office of Employee and Business Services determines whether the item requested is a public record. The Office of Employee and Business Services will also determine whether any non-public portions of the personnel file may be accessed by the ODJFS employee who is the subject of the information.
- 3. Social security numbers, home addresses, driver's license numbers, financial account information, and other personal information contained in personnel files must not be released to third parties and should be redacted prior to release as a public record.
- 4. Should there be any question concerning the release of any information contained in a personnel file, the Office of Employee and Business Services shall consult with the Office of Legal and Acquisition Services prior to release.
- 5. ODJFS employees making public records requests to ODJFS should not do so using a work email address. All documents requested to be provided electronically will only be provided to ODJFS employees at a personal email address. Hard copy documents will only be provided to a home address or a private individual's post office box.

D. CHILD DAY-CARE-LICENSING REPORTS

- 1. All requests for records of child day-care-licensing activities are referred to the ODJFS Child Day-Care-Licensing Section, which provides records to the person making the request.
- 2. The Child Day-Care-Licensing Section may make public records available without charge.

VIII. APPENDIXES:

A. SUBJECT MATTER EXPERT

Entity		Name (SME)	Contact Information
	E. Broad St.	Ramesh Thambuswamy or staff attorney responsible for program area	614-466-4605 legal@jfs.ohio.gov

Columbus, Ohio 43215	

B. List of Certain Records that are not Public Records per ORC 149.43

IPP 8101 Appendix B List of Certain Records that are not Public Records per ORC 149.43.pdf

- C. Sample Log Sheet, JFS 07999 https://innerapp.odjfs.state.oh.us/forms/num/JFS07999/pdf/
- D. ODJFS Public Records and Confidentiality Laws e-Manual IPP 8101 Appendix D ODJFS Public Records and Confidentiality Laws eManual.pdf

IPP.8102. ODJFS Requests for Information from Personal Information Systems

December 20, 2021 - Revised February 1, 2018 - Revised February 14, 2003 - Original

I. PURPOSE/REASON:

To inform Ohio Department of Job and Family Services (ODJFS) employees/work units of the standards covering the release of personal information.

II. REFERENCE/AUTHORITY:

A. REFERENCES

Note: Ohio Revised Code (ORC) and Ohio Administrative Code (OAC) references can be accessed at http://codes.ohio.gov

- 1. <u>IPP 8101 Requests for Public Records Oct 2021.docx</u>
- 2. <u>IPP 3925 Data Access Policy August 2020.docx</u>
- 3. ORC 149.43
- 4. ORC 5101.02
- 5. ORC Chapter 1347
- 6. OAC 5101:9-22-15 and 5101:9-22-16

B. AUTHORITY

- 1. This policy is established by order of the Director, ODJFS, hereinafter referred to as Director.
- 2. Per ORC 5101.02, all duties conferred on the various work units of the department by law or by order of the Director shall be performed under such rules as the Director prescribes and shall be under the Director's control.

III. SUPERSEDES:

ODJFS IPP 8102 dated February 1, 2018

IV. SCOPE:

Personal information systems maintained by ODJFS about specific individuals may contain information that is not public record. This information is accessible to the subject of the information, as well as to his/her guardian, authorized representative, and own

attorney if the attorney has written permission from the subject of the information, unless the information falls within an exemption or exception contained in ORC Chapter 1347.

V. **DEFINITIONS:**

- A. PERSONAL INFORMATION and PERSONALLY IDENTIFIABLE INFORMATION: Any information describing anything about a person, indicating actions done by or to a person, or indicating a person's personal characteristics which can be retrieved from a system by a name, identifying number, symbol, or other identifier assigned to a person.
 - 1. Personal information held by ODJFS also includes but is not limited to:
 - a. Information or records identifying an individual as an applicant for, or a recipient of, services or benefits administered or overseen by ODJFS, along with any other information or records maintained in ODJFS's client databases or in ODJFS's electronic or paper case files pertaining to the individual, such as the amounts and time periods that benefits or services were applied for, received, or denied.
 - b. Identifying information about applicants for or recipients of ODJFS-administered benefits or services, including but not limited to their names, addresses, social security numbers, phone numbers, e-mail addresses, and social and economic status.
 - c. Information about ODJFS employees that does not meet the ORC 149.011 definition of "record," which includes, but is not limited to, their home addresses, home/personal cell phone numbers, social security numbers, driver's license numbers, financial account numbers (especially personal identification numbers), personal email addresses, and other non-work-related information.
 - d. Medical/health data about a particular person, including diagnosis and past history of disease or disability, past/current mental health status, and any reports/records pertaining to physical/mental/health examinations/status.
 - 2. Personal information does not include non-confidential or non-exempt (work-related) information about an individual that ODJFS or other public entities make routinely available to the general public, or ODJFS records that are required to be made available to the public pursuant to federal/state laws or regulations.
- B. SYSTEM: Any collection or group of related records that are maintained by ODJFS in an organized manner, either manually or by any other means, from

which personal information is retrieved by the name of the person or by some identifying number, symbol, or other identifier assigned to the person. System does not include collected archival records in the custody of or administered under the authority of Ohio History Connection, published directories, reference materials or newsletters, or routine information that is maintained for the purpose of internal office administration, the use of which would not adversely affect a person.

- C. USE OF PERSONAL INFORMATION: Any action which causes personal information in a personal information system to be referenced, processed, or disseminated. The disclosure of personal information is a use of personal information.
- D. CHIEF PRIVACY OFFICER: The person designated by ODJFS as being responsible for the personal information systems the agency maintains, including ODJFS's implementation of data security measures and monitoring ODJFS compliance with *ORC 1347* and *OAC 510:9-22-15*. Any unauthorized modification, destruction, use, disclosure or breach of a personal information system must be reported to the chief privacy officer.
- E. RECORDS MANAGERS/LIAISONS: The designated person within each office/bureau in ODJFS who is assigned the responsibility of coordinating the response to records requests that are received by that office/bureau, and for helping to gather/review/redact records that are maintained by that office, in response to records requests.
- F. PERSON: As used in this IPP, "person" means an individual and does not include corporations, partnerships, or other types of business entities.
- G. MAINTAINS: Means ODJFS ownership, control over, responsibility for, or accountability for systems and includes, but is not limited to, the depositing of information with a data processing center for storage, processing, or dissemination. ODJFS maintains all systems of records which are mandated by law to be kept.

VI. POLICY/PROCEDURES:

- A. RECEIPT OF REQUEST FOR PERSONAL RECORDS & ROLE OF RECORDS MANAGERS
 - 1. The individual from each ODJFS office or bureau that is designated by that office as the records manager/liaison shall coordinate the response to any request for personal information that the office/bureau receives.
 - 2. The records manager/liaison must ensure that the identity of the person seeking personal information is verified and must also verify that the person seeking personal information is actually entitled to it (i.e., that

he/she is the subject of the CPI, or his/her attorney, guardian or authorized representative, or that disclosure of the information is essential for program administration). Each office/bureau must determine the types of verification or documentation that will be required, commensurate with the risk level associated with a particular request/transaction. Absent an alternative and equally reliable method of verifying an individual's identity, an office/bureau must obtain from the requesting party a signed written request, along with whichever of the following is/are applicable:

- a. A photocopy of a driver's license, passport, state identification, or other legally acceptable proof of identity from the subject of the information;
- b. A court order or other legally binding document issued by a court of law and signed by the judge, designating the requesting party as the legal guardian of the subject of the information;
- c. A properly executed power of attorney or other legally binding document designating the requesting party as the authorized representative of the subject of the information;
- d. A signed release authorization that meets the requirements of ORC 5101.272 or other applicable law, allowing the subject of the information's attorney to obtain/access confidential personal information; and/or
- e. A signed release authorization that meets the requirements of ORC 5101.272 or other applicable law, allowing a third party to obtain/access confidential personal information, when specifically permitted by state law and rule for the program/benefit/service with which the subject of the personal information is connected.
- 3. The records manager/liaison must also determine if the record exists, if ODJFS maintains the record, and if part or all of the record can be released to the requesting party. If a records manager/liaison is unable to determine whether a record exists or information can be released, then he/she must consult with legal counsel in the Office of Legal and Acquisition Services, and, if needed, the Chief Privacy Officer, to help determine what can be released.

B. RELEASE OF PERSONAL INFORMATION AND EXCEPTIONS TO RELEASE

1. Regardless of whether the provisions of section VI.A. above have been met, pursuant to ORC 1347.08 the following types of personal information, to the extent held by ODJFS, need NOT be

released (and in many instances, are actually prohibited from being released), even to the subject of the information, or to his/her legal guardian, authorized representative or attorney. Individuals should consult with the Office of Legal and Acquisition Services or the ODJFS Chief Privacy Officer prior to releasing any of the information listed below:

- a. confidential law enforcement investigatory records, as defined in ORC 149.43(A)(2);
- b. trial preparation records, as defined in ORC 149.43(A)(4);
- c. medical, psychiatric or psychological information, if a physician, psychiatrist, or psychologist determines that the disclosure of the information is likely to have an adverse effect on the subject. In that case the information shall be released to a physician, psychiatrist, or psychologist designated either by the subject of the information or by his/her legal guardian;
- d. information in the statewide automated child welfare information system (SACWIS) and/or in public children services agency investigatory files, unless release of the information to the subject of the information, or his/her attorney, is expressly provided for in state statute or rule (see ORC 2151.421, and 5101.13 through 5101.134);
- e. information contained in the putative father registry, regardless of whether the information is held by the Department of Job and Family Services, The Office of Child Support, or the Child Support Enforcement Agency (see ORC 3107.062 and 3111.69);
- f. papers, records, and books that pertain to an adoption and that are subject to inspection in accordance with ORC 3107.17;
- g. adoption records listed in ORC 3107.52 and 3705.12 to 3705.124;
- h. information identifying a nursing home resident, patient, complainant about a nursing home, person who provides the health department with information about a nursing home, and any other information that would reasonably tend to disclose the identity of the individuals mentioned previously, when collected and maintained by the Ohio

Department of Health in connection with the investigation of nursing home (including long-term care and residential care facility) complaints and allegations of abuse and neglect of, or misappropriation of property belonging to, nursing home residents (see ORC 3721.031(A)(1) and 3721.25(A)(1));

- i. expunged files and records regarding alleged abuse/neglect and misappropriation of property of residents at long-term care and residential care facilities (see ORC 3721.23(D)(1) and (D)(2));
- j. information held by ODJFS and any contracting agency which identifies a resident of a nursing facility, the identity of any individual who submits a complaint about a nursing facility, a person providing information to ODJFS or contracting agency who requests confidentiality, and any information that would reasonably tend to disclose the identity of the individuals mentioned previously (see ORC 5165.88(A)(1));
- k. test materials, examinations, or evaluation tools used in an examination for licensure as a nursing home administrator that the board of executives of long term services administer under ORC 4751.15, or contracts under that section with a private or government entity to administer;
- 1. information in the statewide automated adult protective services information system (See ORC 5101.631);
- m. any other personal information collected or maintained by ODJFS that is expressly identified in ORC 1347.08 as not being subject to release.
- 2. If the identity of the person seeking personal information has been verified, and it has been determined that he/she is entitled to view the information being sought, as described in section VI.A. above, AND the information is not exempted or prohibited from release under section VI.B.1. above, then ODJFS shall:
 - a. notify the person seeking personal information of the existence or non-existence of any personal information; and
 - b. permit the person seeking personal information to either inspect or obtain copies of the personal information. The person seeking personal information under this section may

be accompanied by another individual of the person's choosing.

3. When personal information is intertwined with information that is considered public record, release of information to third parties may also be governed by some of the provisions in ODJFS – IPP 8101, Requests for Public Records.

C. COSTS

When release of personal information is authorized by law, charges for release of the information shall be the same cost as outlined in ODJFS-IPP 8101, Requests for Public Records, Section VI - F.

D. TIMELINESS AND REQUESTS FOR RELEASE OF INFORMATION

Requests for personal information held by ODJFS shall be released in a timely manner to the subject of the information or to his/her legal guardian, authorized representative, or attorney with written permission from the subject of the information. *Timely manner* means a reasonable amount of time needed to locate, gather, review and determine if the requested information can be released under applicable law. Timeliness includes the time it would take to receive an opinion from the ODJFS Office of Legal and Acquisition Services in relation to whether information may be released, as well as the time needed to perform any required redactions.

E. SECURITY

The person responsible for any personal information system shall take reasonable precautions to protect personal information in the system from unauthorized modification, destruction, use, or disclosure. In determining what is reasonable, consideration will be given to the following:

- 1. the nature and vulnerability of the personal information;
- 2. the physical facilities where the personal information is maintained or used; and
- 3. the requirements of federal and state law governing use of the personal information.

Any ODJFS employee who first discovers or learns of unauthorized modification, destruction, use, disclosure, or breach of a personal information system must report it to his/her immediate supervisor, as well as to the Chief Privacy Officer.

F. DISCIPLINARY ACTION

Disciplinary action, including but not limited to suspension or removal, may be brought against any employee who does any of the following:

- 1. intentionally violates any provision of ORC 149.43 or ORC 1347 or other law related to the release of records or personal information;
- 2. initiates or otherwise contributes to any disciplinary or other punitive action against any individual who brings to the attention of appropriate authorities, the press, or any member of the public evidence of unauthorized use of personal information;
- 3. releases personal information in violation of state or federal law or refuses or fails to release information as provided by state or federal law.

G. DISPUTES CONCERNING INFORMATION IN A PERSONAL INFORMATION SYSTEM

- 1. Employees may receive disputes about the accuracy, relevancy, timeliness, or completeness of personal information that pertains to him/her and that is maintained by ODJFS. In response to any dispute and upon the request of the subject of the information, ODJFS must do all of the following when appropriate:
 - a. within 90 days, investigate the current status of the information regarding its accuracy, relevancy, timeliness, and completeness;
 - b. notify the subject of the information about the results of the investigation and the action being planned as a result of the investigation, unless one of the exceptions in Section VI.B.1. applies; and
 - c. delete any information that the investigation reveals to be inaccurate or that cannot be verified, with notification to the subject of the information, unless law or regulation either prohibits deletion or permits retention of the information, and it is needed for a valid administrative purpose, including but not limited to audits, investigations, overpayment recovery, account reconciliation, and record keeping.
- 2. If ODJFS completes an investigation of personal information for the subject of the information and the subject of the information is not satisfied with the results of the investigation ODJFS shall:

- a. permit the subject of the information to include within the system a brief statement of his/her position regarding the disputed information. ODJFS may limit the statement to 100 or fewer words, if the agency assists the subject of the information in writing a clear summary of the dispute; and
- b. include the subject of the information's statement or notation in any subsequent transfer, report, or dissemination of the disputed information. ODJFS may counter the subject of the information's statement or notation with a departmental statement that it has reasonable grounds to believe that the dispute is frivolous or irrelevant giving the reasons for the determination.
- 3. Following any deletion of information that is found to be inaccurate or that cannot be verified, or if a statement of dispute was filed by the subject of the information, ODJFS shall, at the written request of the subject of the information, furnish notification that the information has been deleted, or furnish a copy of the statement of dispute, to any person specifically designated by the subject of the information.

VII. APPENDIXES:

A. SUBJECT MATTER EXPERT

Owning Entity	Address	Name (SME)	Contact Information
OLAS	30 E. Broad St. 31st Floor Columbus, Ohio 43215	Ramesh Thambuswamy or staff attorney responsible for program area	614-466-4605 legal@jfs.ohio.gov