August 21, 2007

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SYLLABUS: 2007-026

Article II, § 34a of the Ohio Constitution and Am. Sub. H.B. 690, 126th Gen. A. (2006) (eff. April 4, 2007) do not render confidential information about a public employee's rate of pay, the number of hours worked by the employee, or the amount of compensation paid to the employee, nor do they otherwise exempt this information from inspection and copying under R.C. 149.43. Therefore, any person, including any co-worker of a public employee, has the right under R.C. 149.43 to inspect and copy information about a public employee's pay rate, hours worked, and amounts paid.

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OPINION NO. 2007-026

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Dear President Johnson:

You have requested an opinion about how Ohio's new minimum wage constitutional amendment, Ohio Const. art. II, § 34a, and its implementing legislation, impact the way that public colleges and universities respond to requests made under Ohio's public records law, R.C. 149.43, for wage and employment information.

Before addressing the minimum wage amendment and legislation, we will begin with a brief overview of the public records law, focusing on the treatment of employee information thereunder. In the interest of completeness, we will then discuss the rights granted to public employees under the personal information systems law, R.C. Chapter 1347.

Public Records Law, R.C. 149.43

R.C. 149.43 grants any person the right to inspect a public record at any reasonable time, and, upon request, to receive copies of a public record, at cost, and within a reasonable period of time. [1] R.C. 149.43(B)(1). For purposes of R.C. 149.43, a "public record" is a record "kept by

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[1] R.C. 149.43 was enacted in 1963. 1963 Ohio Laws 155, 1644 (Am. Sub. H.B. 187, eff. Sept. 27, 1963). The principle that records held by public offices are subject to public inspection was established, however, prior to the enactment of R.C. 149.43. *See State ex rel. Patterson v Ayers*, 171 Ohio St. 369, 371, 171 N.E.2d 508 (1960) ("'[t]he rule in Ohio is that public records are the people's records, and that the officials in whose custody they happen to be are merely trustees for the people; therefore anyone may inspect such records at any time, subject only to the limitation that such inspection does not endanger the safety of the record, or unreasonably interfere with the discharge of the duties of the officer having custody of the same'") (citation omitted)); *State ex rel. Withworth Bros. Co. v. Dittey*, 12 Ohio N.P. (n.s.) 319, 320, 23 Ohio Dec.

any public office." R.C. 149.43(A)(1). A "public office" includes "any state agency, public institution, political subdivision, or other organized body, office, agency, institution, or entity established by the laws of this state for the exercise of any function of government." R.C. 149.011(A). A community college district is a political subdivision of the state. R.C. 3354.01(A); R.C. 3354.03. Thus, Sinclair Community College is subject to the requirements of R.C. 149.43, and must make its public records available to any person for inspection and copying.[2]

Most of the information that is kept by a public office about its employees is a public record.[3] There are, however, several exceptions. First, personal information about public

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31, 32 (C.P. Franklin County 1911) ("it pretty generally is held that subject to proper regulations and restrictions the public records are open to the inspection of any and all persons who choose to examine them, regardless of whether or not they have any definite interest in the subject-matter thereof").

[2] With limited exceptions, the identity and motivation of a person seeking public records are irrelevant to the duty of a public office under R.C. 149.43 to provide access to the records. *State ex rel. Fant v. Enright*, 66 Ohio St. 3d 186, 188, 610 N.E.2d 997 (1993) ("'[a]ny person' means any person, regardless of purpose…. a person seeking public records is not required to establish a proper purpose or any purpose"). *See also* 2006 Op. Att'y Gen. No. 2006-038 (and cases cited therein); 1990 Op. Att'y Gen. No. 90-050 at 2-210 ("Ohio common law has long recognized that the public nature of public records does not require a person requesting access to such records to have a direct personal interest in the information…. The intended use of the information is not a permissible reason to withhold public records absent an applicable restrictive statutory provision"). *Cf.* R.C. 1347.08(A)(2); R.C. 4111.14(G)(4); note 22, *infra*.

Under Sub. H.B. 9, 126th Gen. A. (2006) (eff. Sept. 29, 2007), "no public office or person responsible for public records may limit or condition the availability of public records by requiring disclosure of the requester's identity or the intended use of the requested public record," unless otherwise authorized. A public office or person responsible for public records "may ask for the requester's identity, and may inquire about the intended use of the information requested, but may do so only after disclosing to the requester … that the requester may decline to reveal the requester's identity or the intended use and when … disclosure of the identity or intended use would benefit the requester by enhancing the ability of the public office or person responsible for public records to identify, locate, or deliver the public records sought by the requester."

[3] *See, e.g., State ex rel. District 1199, Health Care and Social Service Union, SEIU, AFL-CIO v. Lawrence County General Hospital*, 83 Ohio St. 3d 351, 354, 699 N.E.2d 1281 (1998) (names, addresses, job classifications, and job descriptions of all employees at a county hospital "are subject to disclosure under R.C. 149.43"); *State ex rel. Multimedia, Inc. v. Snowden*, 72

employees that does not meet the definition of a "record"—that is, does not serve to document the functions of the office—is not subject to R.C. 149.43.[4] This type of information may include, for example, the home addresses of state employees. *State ex rel. Dispatch Printing Co. v. Johnson*, 106 Ohio St. 3d 160, 2005-Ohio-4384, 833 N.E.2d 274.[5] *Cf. Kish v. City of Akron*, 109 Ohio St. 3d 162, 2006-Ohio-1244, 846 N.E.2d 811, at ¶¶ 25-26 ("[t]ime sheets of government employees fall squarely within the definition of 'records' for purposes of the Public Records Act," and "separate comp-time sheets and the ledger that compiled and contained a summary of the information on the comp-time sheets are all individual records under R.C. 149.011(G)") (internal quotation marks omitted); *State ex rel. Thomas v. Ohio State University*, 71 Ohio St. 3d 245, 246-47, 643 N.E.2d 126 (1994) (the names and *work* addresses of animal research scientists serve to document the organization, functions, and operations of the university's animal research activities, and are records).

Ohio St. 3d 141, 143, 647 N.E.2d 1374 (1995) ("public employee personnel records are generally regarded as public records, absent proof of an exception"); *State ex rel. James v. Ohio State University*, 70 Ohio St. 3d 168, 172, 637 N.E.2d 911 (1994) ("promotion and tenure records maintained by a state-supported institution of higher education are 'public records' pursuant to R.C. 149.43(A)(1), are not subject to any exception, and are, therefore, subject to the public records disclosure requirements of R.C. 149.43(B)"); *State ex rel. Dispatch Printing Co. v. Wells*, 18 Ohio St. 3d 382, 384, 481 N.E.2d 632 (1985) (information maintained by a city civil service commission about a detective's employment, including an order demoting him, constitutes a public record under R.C. 149.43).

[4] A "record" is defined for purposes of R.C. 149.43 in R.C. 149.011(G) to include: "any document, device, or item, regardless of physical form or characteristic, including an electronic record as defined in section 1306.01 of the Revised Code, 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*." (Emphasis added.) *See State ex rel. Fant v. Enright*, 66 Ohio St. 3d at 188 ("not all items in a personnel file may be considered public records…. To the extent that any item contained in a personnel file is not a 'record,' *i.e.*, does not serve to document the organization, etc., of the public office, it is not a public record and need not be disclosed"); *State ex rel. Dispatch Printing Co. v. Wells*, 18 Ohio St. 3d at 385 (personnel file may contain documents which are not necessary to city's execution of its duties and responsibilities, and "[a]ny such information would clearly be outside the scope of R.C. 149.43 and not subject to public disclosure").

[5] The court explained in *State ex rel. Dispatch Printing Co. v. Johnson*, 106 Ohio St. 3d 160, 2005-Ohio-4384, 833 N.E.2d 274, at ¶ 39, however, that an employee's home address may constitute, in some instances, a "record," such as where the employee's work address is also the employee's home address.

Second, the General Assembly has excluded from the meaning of "public record" certain types of information, even though they are kept by, and may document the functions of, a public office. For example, the General Assembly has deemed not to be a public record certain personal and family information kept by a public office about specified safety and law enforcement personnel. R.C. 149.43(A)(1)(p) and (A)(7). *See* Sub. H.B. 141, 126th Gen. A. (2006) (eff. March 30, 2007) (expanding scope of professions and occupations to which exclusion for residential and familial information applies). Also, medical records (regardless of whether they are those of a public employee or other person) are not public records. R.C. 149.43(A)(1)(a) and (A)(3).

The General Assembly has also created a "catch-all" exception for records, "the release of which is prohibited by state or federal law." R.C. 149.43(A)(1)(v). Any information made confidential by law is not, therefore, a public record under R.C. 149.43. *See, e.g., State ex rel. Taxpayers Coalition v. City of Lakewood*, 86 Ohio St. 3d 385, 390, 715 N.E.2d 179 (1999) (a state administrative rule made all information regarding an employee's deferred compensation account confidential, and therefore, the city properly redacted the amounts of deferred compensation contributions, as well as Social Security numbers, from the requested W-2 forms for water department employees). Most notably for our purposes, courts have applied this confidentiality exception to information in which an employee has a constitutional right of privacy, as discussed in greater detail, *infra*.

None of these exceptions, however, have been applied to information about a public employee's rate of pay, number of hours worked, or amount of compensation paid. Courts have ruled consistently that such pay information is a public record.[6] Therefore, R.C. 149.43 grants a

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[6] *See State ex rel. Morgan v. City of New Lexington*, 112 Ohio St. 3d 33, 2006-Ohio-6365, 857 N.E.2d 1208, at ¶¶ 50-51 (records "related to general employment matters, e.g., timesheets, mayoral directives, and personnel records and policies," which were created "in the routine course of public employment," prior to the initiation of criminal and administrative investigations against an employee, are not confidential law-enforcement records and "are not excepted from disclosure under the Public Records Act"); *Kish v. City of Akron*, 109 Ohio St. 3d 162, 2006-Ohio-1244, 846 N.E.2d 811 (time sheets of government employees are public records); *State ex rel. Ohio Patrolmen's Benevolent Ass'n v. Mentor*, 89 Ohio St. 3d 440, 732 N.E.2d 969 (2000) (payroll and overtime records provided to requester); *State ex rel. Beacon Journal Publishing Co. v. Bodiker*, 134 Ohio App. 3d 415, 731 N.E.2d 245 (Franklin County 1999) (the Ohio Public Defender's Office is a "public office" for purposes of R.C. 149.43, and the time sheets completed by attorneys and a computer database reflecting hours logged by individual attorneys are public records); *State ex rel. Petty v. Wurst*, 49 Ohio App. 3d 59, 550 N.E.2d 214 (Butler County 1989) (salary rates and total compensation of individual county employees are public records); *State ex rel. Jones v. Myers*, 61 Ohio Misc. 2d 617, 621, 581 N.E.2d 629 (C.P. Hocking County 1991) ("[t]he public has an absolute right to ascertain the

public employee, any of the employee's co-workers, and any other person, *see* note 2, *supra*, the right to inspect and copy the employee's pay information.

Personal Information Systems Law, R.C. Chapter 1347

R.C. Chapter 1347 grants a public employee the right to inspect and copy personal information about himself that is kept by his employing government agency in a "personal information system."[7] R.C. 1347.08(A)(2) states that, "upon the request and the proper identification of any person who is the subject of personal information in [an agency's] system," the agency must, *inter alia*, "permit the person, the person's legal guardian, or an attorney who presents a signed written authorization made by the person, to inspect all personal information in the system of which the person is the subject." The employer must also provide a copy of any personal information to any person who is authorized to inspect the information, and may charge reasonable fees for the service of copying. R.C. 1347.08(D). A person has the right to dispute, and seek to correct, any personal information pertaining to him that he believes is inaccurate or incomplete. R.C. 1347.09. A public employee's pay information is "personal information" that the employee may inspect and copy under R.C. Chapter 1347. *See* 1981 Op. Att'y Gen. No. 81-038 at 2-149 ("[i]nformation regarding employees of the [Ohio Civil Rights] Commission clearly constitutes 'personal information' as defined by R.C. 1347.01(E)").

As explained in 1990 Op. Att'y Gen. No. 90-007, "R.C. Chapter 1347 grants to the subject of the information the right to inspect and dispute such information and requires the agency to investigate the disputed information," but R.C. Chapter 1347 does *not* "make information about individuals confidential." *Id.* at 2-32. And, because "R.C. Chapter 1347 does not make information confidential, but instead grants additional inspection rights, R.C. Chapter 1347 does not function to except personal information kept by a public office from the definition of 'public record' under R.C. 149.43(A)(1)." *Id.* at 2-33. "Personal information under R.C. Chapter 1347, thus, is not a 'record the release of which is prohibited by state or federal law.'" *Id.* Although R.C. Chapter 1347 "regulates access to personal information that is maintained in a

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earnings of its servants"). *See also* 1981 Op. Att'y Gen. No. 81-006 at 2-22 ("township payroll records must be made available to any member of the general public at all reasonable times for inspection").

[7] "Personal information" is defined as "any information that describes anything about a person, or that indicates actions done by or to a person, or that indicates that a person possesses certain personal characteristics, and that contains, and can be retrieved from a system by, a name, identifying number, symbol, or other identifier assigned to a person." R.C. 1347.01(E). A "system" is "any collection or group of related records that are kept in an organized manner and that are maintained by a state or local agency, and from which personal information is retrieved by the name of the person or by some identifying number, symbol, or other identifier assigned to the person." R.C. 1347.01(F).

personal information system by persons who are the subject of the information," it "does not limit the authority of any person, including a person who is the subject of personal information maintained in a personal information system, to inspect or have copied, pursuant to [R.C. 149.43], a public record as defined in that section." R.C. 1347.08(E)(1). *See also* R.C. 149.43(D) ("Chapter 1347. of the Revised Code does not limit the provisions of this section"); R.C. 1347.04(B) ("[t]he provisions of this chapter shall not be construed to prohibit the release of public records, or the disclosure of personal information in public records, as defined in [R.C. 149.43]…. The disclosure to members of the general public of personal information contained in a public record, as defined in [R.C. 149.43], is not an improper use of personal information under this chapter").

In sum, a public employee has the right under R.C. 149.43 and R.C. Chapter 1347 to inspect and copy his own pay information. Any other person may inspect and copy the pay information of a public employee under R.C. 149.43, and R.C. Chapter 1347 does not restrict his ability to do so. We turn now to the new minimum wage amendment, Ohio Const. art. II, § 34a, and its implementing legislation.

New Minimum Wage Amendment, Ohio Const. art. II, § 34a

In November, 2006, Ohio voters passed a second minimum wage amendment to the Ohio Constitution, Ohio Const. art. II, § 34a (§ 34a or the Amendment).[8] The Amendment required

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[8] The first minimum wage amendment was adopted on September 3, 1912. This amendment, Ohio Const. art. II, § 34, states: "Laws may be passed fixing and regulating the hours of labor, establishing a minimum wage, and providing for the comfort, health, safety and general welfare of all employes; and no other provision of the constitution shall impair or limit this power." *See generally Johnson v. BP Chemicals, Inc.*, 85 Ohio St. 3d 298, 310, 707 N.E.2d 1107 (1999) (Cook, J., dissenting) ("Section 34, Article II resulted from claims that the General Assembly had no authority under the Constitution to legislate in the area of minimum wages and the like" because such laws "impaired the constitutional right to contract"); *City of Rocky River v. State Employment Relations Bd.*, 43 Ohio St. 3d 1, 539 N.E.2d 103 (1989) (wherein the history of Ohio Const. art. II, § 34 is discussed in extensive detail in both the majority opinion and Justice Wright's dissent). As mentioned by the General Assembly in the legislation implementing § 34a, Am. Sub. H.B. 690 (uncodified section 6(C)(2)), § 34a "made no attempt to amend, repeal, or otherwise modify" § 34.

Legislation implementing § 34 was enacted in 1933. 1933 Ohio Laws 502 (H.B. 681, filed July 11, 1933) (codified as G.C. 154-45d to 154-45t). This original legislation, which charged the director of the department of industrial relations with establishing minimum fair wage rates for women and minors, was found to be constitutional under both the federal and state constitutions. *Walker v. Chapman*, 17 F. Supp. 308 (S.D. Ohio 1936); *Strain v. Southerton*, 148

"every employer" to pay its employees not less than six dollars and eighty-five cents per hour, beginning January 1, 2007, and provides for periodic increases in the minimum wage rate based on the rate of inflation according to the consumer price index. The Amendment includes mechanisms for enforcing the minimum wage rate, and requires employers to keep records documenting compliance. The language of § 34a at issue reads:

> An employer shall maintain a record of the name, address, occupation, pay rate, hours worked for each day worked and each amount paid an employee for a period of not less than three years following the last date the employee was employed. *Such information shall be provided without charge to an employee or person acting on behalf of an employee upon request.* (Emphasis added.)

An "employer" subject to this provision includes "the state and every political subdivision," as well as private employers. Ohio Const. art. II, § 34a. As a political subdivision of the state, Sinclair Community College (College) is subject to Ohio Const. art. II, § 34a, and is required to maintain a record of an employee's name, address, occupation, and pay rate, the number of hours worked by an employee, and the amount of compensation paid to an employee; and, the College must provide this information, upon request, to an employee or person acting on an employee's behalf.

Implementing Legislation—Am. Sub. H.B. 690

Article II, § 34a of the Ohio Constitution states that, "[l]aws may be passed to implement [the section's] provisions and create additional remedies, increase the minimum wage rate and extend the coverage of the section, but in no manner restricting any provision of the section or the power of municipalities under Article XVIII of this constitution with respect to the same." The General Assembly enacted Am. Sub. H.B. 690, 126th Gen. A. (2006) (eff. April 4, 2007) to implement Ohio Const. art. II, § 34a. *See also* Am. Sub. H.B. 690, section 6(C) (uncodified) ("[t]he General Assembly enacts this act according to the proponents' campaign materials and pursuant to the authority vested in the General Assembly" by Ohio Const. art. II, §§ 34a and 34). The provisions of Am. Sub. H.B. 690 likewise apply to the state and its instrumentalities, and to political subdivisions and their instrumentalities, as well as to private employers.[9] R.C. 4111.03(E)(2);[10] R.C. 4111.14(B).

Ohio St. 153, 161, 74 N.E.2d 69 (1947) (wherein the court added that, "[w]ithout constitutional authorization, the General Assembly of Ohio could have enacted a minimum wage law in the exercise of the police power"). Minimum wage legislation was later codified in R.C. Chapter 4111. *See* 1973 Ohio Laws, Part I, 1501 (Am. Sub. H.B. 201, eff. Dec. 19, 1973).

[9] The legislation enacted under Ohio Const. art. II, § 34, *see* note 8, *supra*, also included "the state of Ohio, its instrumentalities, and its political subdivisions and their instrumentalities,"

As enacted by Am. Sub. H.B. 690, division (F) of R.C. 4111.14 imposes record-keeping requirements on employers, [11] stating that, "[i]n accordance with Section 34a of Article II, Ohio Constitution, an employer shall maintain a record of the name, address, occupation, pay rate, hours worked for each day worked, and each amount paid an employee for a period of not less than three years following the last date the employee was employed by that employer." [12] Division (G) of R.C. 4111.14, as enacted by Am. Sub. H.B. 690, imposes upon employers the duty to provide certain information to its employees, stating that, "[i]n accordance with Section 34a of Article II, Ohio Constitution, an employer must provide such information without charge to an employee or person acting on behalf of an employee upon request." The phrase, "such information," means "the name, address, occupation, pay rate, hours worked for each day worked, and each amount paid *for the specific employee who has requested that specific employee's own information* and does *not include* the name, address, occupation, pay rate, hours worked for each day worked, or each amount paid *of any other employee of the employer*." (Emphasis added.) R.C. 4111.14(G)(1). A "request" is defined as a request made by an employee (or a person acting on the employee's behalf) "for the employee's *own* information."

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as well as private entities, as "employers" subject to the state minimum wage law. *See, e.g.*, 1999-2000 Ohio Laws, Part II, 4177, 4589 (H.B. 471, eff. July 1, 2000).

[10] Sub. H.B. 187, 126th Gen. A. (2006) (eff. July 1, 2007) amended R.C. 4111.03 after the enactment of Am. Sub. H.B. 690, and what was division (E) of R.C. 4111.03 under Am. Sub. H.B. 690 is now division (D) of R.C. 4111.03.

[11] R.C. 4111.08 also requires every employer to "make and keep for a period of not less than three years a record of the name, address, and occupation of each of the employer's employees, the rate of pay and the amount paid each pay period to each employee, the hours worked each day and each work week by the employee, and other information as the director of commerce prescribes by rule…. Records may be opened for inspection or copying by the director [of commerce] at any reasonable time." This language was in effect prior to the enactment of Am. Sub. H.B. 690, and was unchanged thereby. *See* 1999-2000 Ohio Laws, Part II, at 4592.

[12] Division (F) of R.C. 4111.14 proceeds to define the various terms used therein. For example, "address" means "an employee's home address as maintained in the employer's personnel file or personnel database for that employee." A "record" is "the name, address, occupation, pay rate, hours worked for each day worked, and each amount paid an employee in one or more documents, databases, or other paper or electronic forms of record-keeping maintained by an employer…. An employer shall maintain a record or records from which the employee or person acting on behalf of that employee could reasonably review the information requested by the employee or person."

(Emphasis added.) R.C. 4111.14(G)(4).[13] An employer "may require that the employee provide the employer with a written request that has been signed by the employee and notarized and that reasonably specifies the particular information being requested," and the "employer may require that the person acting on behalf of an employee provide the employer with a written request that has been signed by the employee whose information is being requested and notarized and that reasonably specifies the particular information being requested." *Id.* *Cf.* R.C. 1347.08(A)(2) (a state or local agency may require proper identification of the person who is requesting to inspect his personal information, and an attorney may inspect personal information if he "presents a signed written authorization made by the person" who is the subject of the information).

Therefore, an employer, whether public or private, must provide to any employee, upon request and without charge, information the employer maintains on that employee's pay rate, hours worked each day, and each amount paid. (For ease of discussion, we will refer collectively to pay rate, hours worked each day, and each amount paid, as "pay information.") *See* note 19, *infra.* As interpreted by Am. Sub. H.B. 690, however, Ohio Const. art. II, § 34a, requires only that an employer provide pay information to the employee who is the subject of the information—the employer has no obligation to make the information available to the employee's co-workers.[14]

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[13] "Such information" does not, however, include "hours worked for each day worked by individuals for whom an employer is not required to keep that information under the Fair Labor Standards Act and its regulations or individuals who are not subject to the overtime pay requirements specified in section 4111.03 of the Revised Code." R.C. 4111.14(G)(1).

Division (G)(2) of R.C. 4111.14 defines "acting on behalf of an employee" as a person acting on behalf of an employee as a collective bargaining representative, attorney, or parent, guardian, or legal custodian. A person who is "acting on behalf of an employee" must be "specifically authorized by an employee in order to make a request for that employee's own" pay information. *Id.* The term, "provide," means that an employer must provide the requested pay information "within thirty business days after the date the employer receives the request," unless the employer and employee agree otherwise, or the "thirty-day period would cause a hardship on the employer under the circumstances, in which case the employer must provide the requested information as soon as practicable." R.C. 4111.14(G)(3).

[14] Article II, § 34a of the Ohio Constitution does require an employer to make available to the "state" any records related to an investigation of an alleged violation of the minimum wage law. *See also* R.C. 4111.04; R.C. 4111.08; R.C. 4111.14(H), (I), (N) (the "state" is deemed to be the director of commerce).

Relationship between the Minimum Wage Amendment and Legislation and the Public Records Law

Article II, § 34a of the Ohio Constitution makes no mention of R.C. 149.43, nor does Am. Sub. H.B. 690, except as to state investigative material. *See note* 17, *infra*. Neither § 34a nor Am. Sub. H.B. 690 makes employees' pay information confidential. They impose a duty on employers to *provide* information to the subject of the information, but include no language *prohibiting* an employer from disclosing information to other persons. R.C. 4111.14(G) interprets § 34a as granting employees the right to access their own pay information, but is silent as to the ability of others to access that information. Like R.C. Chapter 1347, discussed above,[15] § 34a and R.C. 4111.14(G) grant the subject of the information the right to inspect the information, but do not "make information about individuals confidential," nor "function to except" the pay information kept by a public employer from the definition of "public record." 1990 Op. Att'y Gen. No. 90-007, at 2-33.

As set forth in notes 3 and 6, *supra*, the courts' position on the nature of a public employee's pay information as a public record is long-standing and unvarying. We can only assume that if those who drafted, or voted to adopt, § 34a, or if the General Assembly in enacting Am. Sub. H.B. 690, had intended to overturn this long line of precedent, they would have explicitly done so. *See State v. Carswell*, 2007-Ohio-3723, at ¶ 6 (Ohio Sup. Ct., decided July 25, 2007) (the rule of construction that statutes are presumed to be constitutional applies even where the statute was enacted prior to the adoption of the constitutional provision at issue—"the general rule as to the interpretation of constitutional amendments is that 'the body enacting the amendment will be presumed to have had in mind existing constitutional or statutory provisions

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[15] Division (M) of R.C. 4111.14 states that, an employer who provides employee pay information is "immune from any civil liability for injury, death, or loss to person or property that otherwise might be incurred or imposed as a result of providing that information to an employee or person acting on behalf of an employee in response to a request by the employee or person, *and the employer shall not be subject to the provisions of Chapters 1347.* and 1349. of the Revised Code *to the extent that such provisions would otherwise apply*." (Emphasis added.) The significance of the reference to R.C. Chapter 1347, the personal information systems law, and R.C. Chapter 1349, which sets out various consumer protection provisions, is not immediately clear. Both chapters do, however, impose duties on state agencies and agencies of political subdivisions (R.C. 1347.12) and other entities (R.C. 1349.19) to disclose the breach of security of a computerized data system that includes personal information.

By citing R.C. Chapter 1347 we do not mean to disregard R.C. 4111.14(M), but use the obligations imposed on public employers and rights granted to public employees under R.C. 1347.05 and R.C. 1347.08 as points of comparison to the obligations imposed and rights granted under § 34a and Am. Sub. H.B. 690.

and their judicial construction, touching the subject dealt with'" (internal quotations and citations omitted)). *See also State v. Cichon*, 61 Ohio St. 2d 181, 183-84, 399 N.E.2d 1259 (1980) ("legislative inaction in the face of longstanding judicial interpretations of that section evidences legislative intent to retain existing law"); *State ex rel. Kilgore v. Industrial Commission*, 123 Ohio St. 164, 172, 174 N.E. 345 (1930) ("our construction of [a statute], as shown by our reported decisions, has been or should have been known for many years; and meanwhile there has been ample time for the amendment of the statute if it tends to injustice").

Furthermore, as articulated by the court in *Kish v. City of Akron*, the public records law is the protector of fundamental democratic freedoms. In *Kish*, the court describes public records as "one portal through which the people observe their government, ensuring its accountability, integrity, and equity while minimizing sovereign mischief and malfeasance." 109 Ohio St. 3d 162, at ¶ 16. Public records "afford an array of other utilitarian purposes necessary to a sophisticated democracy," and "promote cherished rights such as freedom of speech and press." *Id*. Laws such as R.C. Chapter 149 "reinforce the understanding that open access to government papers is an integral entitlement of the people, to be preserved with vigilance and vigor."[16] *Id.* at ¶ 17. *See also* note 1, *supra* (the principle of open public records predates enactment of R.C. 149.43).

The fundamental purpose of the public records law thus likewise suggests that, if those who drafted, and voted to adopt, Ohio Const. art. II, § 34a, or if the General Assembly in enacting Am. Sub. H.B. 690, had intended to limit R.C. 149.43 and exempt public employee pay information from disclosure under R.C. 149.43, they would not have done so by implication—

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[16] *See also State ex rel. Strothers v. Wertheim*, 80 Ohio St. 3d 155, 158, 684 N.E.2d 1239 (1997) ("[o]ne of the salutary purposes of the Public Records Law is to ensure accountability of government to those being governed. Thus, records, with certain enumerated exceptions, held by government entities belong to the public and must be open for inspection to all citizens"); *State ex rel. The Miami Student v. Miami Univ.*, 79 Ohio St. 3d 168, 171, 680 N.E.2d 956 (1997) ("[i]n deciding this issue, we are mindful that inherent in R.C. 149.43 is the fundamental policy of promoting open government, not restricting it. Thus, the exceptions to disclosure are strictly construed against the custodian of public records in order to promote this public policy"); *State ex rel. WHIO-TV-7 v. Lowe*, 77 Ohio St. 3d 350, 355, 673 N.E.2d 1360 (1997) ("the purpose of Ohio's Public Records Act, R.C. 149.43, is to expose government activity to public scrutiny, which is absolutely essential to the proper working of a democracy"); *White v. Clinton County Bd. of Commissioners*, 76 Ohio St. 3d 416, 420, 667 N.E.2d 1223 (1996) ("public scrutiny is necessary to enable the ordinary citizen to evaluate the workings of his or her government and to hold government accountable").

such an intent would have been explicitly noted.[17] As recently stated by the court in *State v. Carswell*, the "'rule, that repeals by implication are not favored, is applicable to the inquiry whether any particular enactment has ceased to be in force on account of repugnancy to the new constitution…. The repugnancy which must cause the law to fall, must be necessary and obvious.'" 2007-Ohio-3723, at ¶ 9.

Granted, R.C. Chapter 1347 expressly states that its provisions do not limit the mandates of R.C. 149.43. R.C. 1347.04(B); R.C. 1347.08(E)(1). *See also* R.C. 149.43(D). Inclusion of this type of explicit language in Ohio Const. art. II, § 34a and Am. Sub. H.B. 690, describing the relationship between the minimum wage law and R.C. 143.49, assuredly would have been desirable. Nonetheless, we cannot infer from the affirmation in R.C. Chapter 1347 that its provisions do not limit R.C. 149.43, that the absence of such language in § 34a and Am. Sub. H.B. 690 means that R.C. 149.43 is to be disregarded as applied to the pay information of public employees.[18] We cannot assume that the voters or the General Assembly intended to override R.C. 149.43 *sub silentio*, or to so casually dispense with the protections of the public records law. We conclude therefore, that the rate of pay, number of hours worked, and amount of compensation paid to public employees remain a public record under R.C. 149.43 and are subject to inspection and copying by any person.[19]

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[17] Under division (I) of R.C. 4111.14, as enacted by Am. Sub. H.B. 690, "[a]ll records and information related to investigations by the state" into violations of the minimum wage law "are confidential and are not a public record subject to section 149.43 of the Revised Code." Also, division (M) includes language that an employer is not subject to R.C. Chapters 1347 and 1349. *See* note 15, *supra*. Divisions (I) and (M) support the conclusion that, if the General Assembly had intended for public employee pay information to be confidential or for Am. Sub. H.B. 690 to supersede R.C. 149.43 with regard to access to public employees' pay records, it would have done so explicitly. *See Lake Shore Electric Railway Co. v. Public Utilities Commission*, 115 Ohio St. 311, 319, 154 N.E. 239 (1926) (had the legislature intended a particular meaning, "it would not have been difficult to find language which would express that purpose," having used that language in other connections).

[18] When R.C. Chapter 1347 was enacted in 1977, it, too, failed to address the effect its provisions had on R.C. 149.43. As explained in 1980 Op. Att'y Gen. No. 80-096 at 2-376, the "need for some sort of legislative revision ... became immediately apparent," and the General Assembly, which had enacted R.C. Chapter 1347 "without fully resolving its impact upon the public records statute, began the arduous process of legislative reconciliation."

[19] If information about a public employee is a "public record" under R.C. 149.43, nothing in § 34a or R.C. 4111.14(G) restricts access by the public to that information. As discussed above, however, not all information kept by an employer about an employee is a public record. For example, § 34a and Am. Sub. H.B. 690 require an employer to maintain the home address of an

Public employees have long had the ability to inspect and copy their own pay information under R.C. 149.43 (and R.C. Chapter 1347). Our conclusion that § 34a and Am. Sub. H.B. 690 do not act as an exception to R.C. 149.43 means, therefore, that the minimum wage provisions do not grant public employees rights of access they did not already have.[20] Our conclusion does not, however, render § 34a and Am. Sub. H.B. 690 superfluous. Although public employees have had broad rights of access to their own pay information, private employees have not.[21] The Amendment and Am. Sub. H.B. 690 grant employees the right to inspect and copy their own pay information—a right which private employees did not formerly enjoy under state law.

Access by Other Employees

If an employee's pay information is a public record under R.C. 149.43, it is available not only to that employee, but also to other employees of that employer (as well to as any other

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employee, and to make that information available to the employee. In *State ex rel. Dispatch Printing Co. v. Johnson*, 106 Ohio St. 3d 160, 2005-Ohio-4384, 833 N.E.2d 274, however, the court held that the home addresses of state employees are not, as a general matter, "records" subject to R.C. 149.43. While a public employer must make available to an employee, or a person acting on the employee's behalf, the address that the employer maintains as that employee's home address, in compliance with § 34a and R.C. 4111.14(G), the public employer is not generally required by R.C. 149.43 to make the home addresses of its employees available for public inspection and copying.

[20] Article II, § 34a of the Ohio Constitution and R.C. 4111.14(G) do, however, require an employer to provide employees with copies of their pay information free of charge, whereas R.C. 149.43 permits an agency to charge a requester the actual cost of providing the copies.

[21] In Ohio, prior to the adoption of Ohio Const. art. II, § 34a, the only personal information maintained by a private employer about an employee that could be accessed by the employee was medical information. R.C. 4113.23(A) requires an employer (whether private or public) to furnish an employee, upon written request, medical information pertaining to the employee if the medical report arises "out of any physical examination by a physician or other health care professional and any hospital or laboratory tests which examinations or tests are required by the employer as a condition of employment or arising out of any injury or disease related to the employee's employment." The "employer may require the employee to pay the cost of furnishing copies of the medical reports … but in no case shall the employer charge more than twenty-five cents for each page of a report." R.C. 4113.23(B).

Other States have granted private employees broader rights of access to information maintained about them by their employers. *See, e.g.,* Alaska Stat. § 23.10.430; Cal. Lab. Code § 1198.5; Conn. Gen. Stat. § 31-128b; Iowa Code § 91A.2 and 91B.1; 26 M.R.S. § 631 (Maine); Minn. Stat. § 181.960 and 181.961; Rev. Code Wash. § 49.12.240, 49.12.250, and 49.12.260.

person). Language in Am. Sub. H.B. 690, however, raises the issue whether an employee is guaranteed the right to inspect his or her own pay records, but also affirmatively barred from viewing the pay records of his fellow employees.

1. Findings of Purpose

In Am. Sub. H.B. 690, the General Assembly made findings as to the purpose of Ohio Const. art. II, § 34a. Division (A)(4) of R.C. 4111.14 reads:

> (A) Pursuant to the general assembly's authority to establish a minimum wage under Section 34 of Article II, Ohio Constitution, this section is in implementation of Section 34a of Article II, Ohio Constitution. In implementing Section 34a of Article II, Ohio Constitution, *the general assembly hereby finds that the purpose of Section 34a of Article II, Ohio Constitution is to*:
>
> ….
>
> (4) *Protect the privacy* of Ohio employees' pay and personal information specified in Section 34a of Article II, Ohio Constitution *by restricting an employee's access*, and access by a person acting on behalf of that employee, to the employee's own pay and personal information.

(Emphasis added.) While § 34a and R.C. 4111.14(G) speak in terms of an employee's right to access his own pay information, division (A)(4) of R.C. 4111.14 speaks in terms of *restricting* an employee from accessing the pay information of *other employees* in order to protect the other employees' privacy. *See also* section 6(B)(3) (uncodified) of Am. Sub. H.B. 690 ("[t]he Amendment does not threaten employees' privacy because employees may seek access only to their own payroll records"). [22]

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[22] Section 6 (uncodified) of Am. Sub. H.B. 690, which also declares the General Assembly's intent in enacting Am. Sub. H.B. 690, reads in pertinent part:

> (A) The General Assembly, by enacting this act, intends to implement the Ohio Fair Minimum Wage Amendment in the manner in which the proponents of the Amendment described it to Ohio voters during the campaigns for the General Election on November 7, 2006.
>
> (B) The proponents of the Ohio Fair Minimum Wage Amendment issued campaign materials, one of which was entitled "Fact vs. Fiction: Minimum Wage Opponents Shamelessly Distort Facts to Deny Low-Wage Workers a Raise,"

Although perhaps inartfully worded, division (A)(4) of R.C. 4111.14 expresses the General Assembly's understanding that the Amendment bars one employee from accessing the pay information of other employees. However, while courts may grant some deference in determining legislative intent to "purpose" or "findings" language, such as that found in R.C. 4111.14(A), they have refused to treat such language as substantive law, and have found that, in some instances, it unconstitutionally violates the separation of powers doctrine by usurping the role of the judiciary to interpret statutes and determine their constitutionality. *See State ex rel. Ohio Academy of Trial Lawyers v. Sheward*, 86 Ohio St. 3d 451, 715 N.E.2d 1062 (1999); *State ex rel. Shkurti v. Withrow*, 32 Ohio St. 3d 424, 513 N.E.2d 1332 (1987); *City of Dublin v. State*, 118 Ohio Misc. 2d 18, 769 N.E.2d 436 (C.P. Franklin Co. 2002), at ¶ 247 ("[t]he opinion of the General Assembly in matters that are ultimately subject to judicial determination cannot be regarded as determinative," and the "interpretation of the Constitution is a judicial, rather than a legislative, question"). R.C. 4111.14(A)(4) thus is not determinative of the meaning of § 34a—especially considering that division (G), which is substantive law, does not include this language of restriction, but more closely tracks the language of § 34a. Employees are "restricted" by Ohio Const. art. II, § 34a from viewing their co-workers' pay information only in the sense that the Amendment's grant of rights, as interpreted in division (G) of R.C. 4111.14, is limited to an employee's right to inspect his own records.

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published by Ohioans for a Fair Minimum Wage, that stated all of the following upon which Ohio voters relied to be honest and accurate:

> ….
>
> (3) The Amendment does not threaten employees' privacy because employees may seek access only to their own payroll records.
>
> (4) The Amendment allows an employer to take reasonable steps to verify that a person does in fact represent the employee.

Although section 6(B)(4) states that, "[t]he Amendment allows an employer to take reasonable steps to verify that a person does in fact represent the employee," no language to that effect is, in fact, in the Amendment. R.C. 4111.14(G)(4), however, provides that, an employer "may require that the employee provide the employer with a written request that has been signed by the employee and notarized and that reasonably specifies the particular information being requested." Also, the employer "may require that the person acting on behalf of an employee provide the employer with a written request that has been signed by the employee whose information is being requested and notarized and that reasonably specifies the particular information being requested." *Id. Cf.* R.C. 1347.08(A), *supra*.

2. Protection of Co-Workers' Privacy

R.C. 4111.14(A)(4) and section 6(B)(3) of Am. Sub. H.B. 690 speak in terms of protecting an employee's "privacy" by restricting other employees from accessing his pay information. The Amendment is not, however, a privacy enactment—it says nothing about protecting the privacy of employees' pay information and bestows no rights of privacy in an employee's pay information. The same is true for division (G) of R.C. 4111.14.

A public employee in Ohio has no "generalized privacy concerns" in his personal information that is maintained by his employers in a public record.[23] On rare occasions, courts have found that public employees have a constitutional right of privacy in certain personal information maintained by their employers, and that such information is not a public record under the "catch-all" exception because its release is prohibited by federal law.[24] Never have

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[23] *See State ex rel. WBNS TV, Inc. v. Dues*, 101 Ohio St. 3d 406, 2004-Ohio-1497, 805 N.E.2d 1116, at ¶ 31 ("we have not authorized courts or other records custodians to create new exceptions to R.C. 149.43 based on a balancing of interests or generalized privacy concerns"); *State ex rel. Thomas v. Ohio State University*, 71 Ohio St. 3d 245, 247-48, 643 N.E.2d 126 (1994) (with regard to names and work addresses of state university research employees, court declined to apply a balancing test similar to that in FOIA, which allows federal agencies to withhold information if disclosure would constitute "a clearly unwarranted invasion of personal privacy"); *State ex rel. Beacon Journal Publishing Co. v. Bodiker*, 134 Ohio App. 3d at 430, (with regard to time records of state employees, court declined to "apply a generalized public-policy-based balancing"). *But cf. State ex rel. Keller v. Cox*, 85 Ohio St. 3d 279, 282, 707 N.E.2d 931 (1999) and *State ex rel. McCleary v. Roberts*, 88 Ohio St. 3d 365, 370-72, 725 N.E.2d 1144 (2000) (applying a "good sense rule" to help justify withholding records the release of which exposed persons who were the subjects of the records to a risk of harm to their personal safety); *Patrolman "X" v. City of Toledo*, 132 Ohio App. 3d 374, 396-97, 725 N.E.2d 291 (Lucas County 1999) (adopting judgment of trial court in Appendix "A") (a city is not immune from liability under R.C. 2744.09 for claims brought by an employee alleging a common law privacy tort—the city may be liable for disclosure if it authorizes the disclosure of documents that are not public records, but the city is not liable for the release of other documents that are public records).

[24] In *State ex rel. Beacon Journal Publishing Co. v. City of Akron*, 70 Ohio St. 3d 605, 640 N.E.2d 164 (1994), the court found that, a federal statutory scheme had created in city employees an "expectation of privacy" concerning their Social Security Numbers (SSN's), and that this expectation of privacy outweighed the public benefits of disclosure, considering that disclosure of the SSN's would: (1) reveal little about government processes; (2) reveal "intimate, personal details of each city employee's life, which are completely irrelevant to the operations of government;" and, (3) create a "high potential for fraud and victimization." *Id.* at 610-12.

Because the employees' privacy interests thus outweighed the public's interest in disclosure, the court concluded that the United States Constitution forbids disclosure of the employees' Social Security Numbers.

State courts have subsequently used this analysis to determine, *inter alia,* whether public employees have a constitutional right of privacy in various types of personal information. *See, e.g., State ex rel. Fisher v. City of Cleveland,* 109 Ohio St. 3d 33, 2006-Ohio-1827, 845 N.E.2d 500 (federal and state statutes create an expectation of privacy in city employees' income tax returns, and these privacy interests outweigh the benefits of disclosure—in this case to the employing city—especially because the city has numerous alternatives to obtain the information it needs); *State ex rel. Plain Dealer Publishing Co. v. City of Cleveland,* 75 Ohio St. 3d 31, 35, 661 N.E.2d 187 (1996) (unlike *Beacon Journal Publishing Co.,* "there is no legislative scheme protecting resumes of applicants for public employment similar to the statutes protecting SSNs, and the city has not established the same high potential for victimization that could result from disclosure of resumes that the court found in *Beacon Journal Publishing Co.* as to SSNs"); *State ex rel. Thomas v. Ohio State University,* 71 Ohio St. 3d at 248 ("[t]here is no similar legislative scheme [as with SSN's] protecting the names and work addresses of public employees in general or animal research scientists in particular," and "there does not appear to be the same 'high potential for … victimization' found by the court to be apparent from the disclosure of SSN's;" thus, the "assertion that the constitutional right to privacy excepts names and *work* addresses from disclosure under R.C. 149.43 is without merit") (emphasis added); *State ex rel. Beacon Journal Publishing Co. v. Bodiker,* 134 Ohio App. 3d at 430 (as to state public defenders' time sheets and hours logged in a death penalty case, there is no legislative scheme creating a legitimate expectation of privacy nor a high potential for victimization resulting from disclosure).

In *State ex rel. Keller v. Cox,* the court did not use the *Beacon Journal Publishing Co.* analysis to determine whether a city was required to disclose to a criminal defendant information in the files of police officers pertaining to the names of the officers' children, spouses, parents, home addresses, telephone numbers, beneficiaries, and medical information. Due to the similarity of fact patterns, the court instead based its decision on *Kallstrom v. City of Columbus,* 136 F.3d 1055 (6th Cir. 1998), in which the federal court of appeals found that city police officers had a privacy interest "of constitutional dimension" in "preserving their lives and the lives of their family members, as well as preserving their personal security and bodily integrity," and that "where the release of private information places an individual at substantial risk of serious bodily harm, possibly even death, from a perceived likely threat … the governmental act [of disclosure of such information] 'reaches a level of significance sufficient to invoke strict scrutiny as an invasion of personhood.'" *Id.* at 1062, 1064.

The *Kallstrom* court further explained that, where disclosure "infringes upon a fundamental right, such action will be upheld under the substantive due process component of

courts found, however, that pay information is information in which public employees have a constitutional right of privacy. *See State ex rel. Morgan v. City of New Lexington*, 112 Ohio St. 3d 33, 2006-Ohio-6365, 857 N.E.2d 1208, at ¶¶ 50-51 (records "related to general employment matters, e.g., timesheets, mayoral directives, and personnel records and policies," which were created "in the routine course of public employment," are public records); *Kish v. City of Akron*, 109 Ohio St. 3d 162, at ¶ 25 (time sheets of government employees are public records); *State ex rel. Beacon Journal Publishing Co. v. City of Akron*, 70 Ohio St. 3d 605, 640 N.E.2d 164 (1994) (pay rates, overtime hours and pay, and year-to-date earnings of city employees released by city to newspaper); *State ex rel. Beacon Journal Publishing Co. v. Bodiker*, 134 Ohio App. 3d 415, 731 N.E.2d 245 (Franklin County 1999) (the time sheets completed by attorneys in the Ohio Public Defender's Office and the Office's computer database reflecting hours logged by individual attorneys are public records); *State ex rel. Petty v. Wurst*, 49 Ohio App. 3d 59, 61, 550 N.E.2d 214 (Butler County 1989) (disclosure of the salary rates and total compensation of individual county employees is "unlikely to result, at least to any measurable extent" in an invasion of the employees' privacy—"any invasion of privacy would be slight and insufficient to outweigh the public's right to know"); (*State ex rel. Jones v. Myers*, 61 Ohio Misc. 2d 617, 621, 581 N.E.2d 629 (C.P. Hocking County 1991) ("[t]he public has an absolute right to ascertain the

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the Fourteenth Amendment only where the governmental action furthers a compelling state interest, and is narrowly drawn to further that state interest." *Id.* at 1064. In *Kallstrom*, the court assumed that "the interests served by allowing public access to agency records rises to the level of a compelling state interest," but found that "the City's release to the criminal defense counsel of the officers' and their family members' home addresses and phone numbers, as well as the family members' names and the officers' driver's licenses" did not "in any way increase[] public understanding of the City's law enforcement agency," and thus did not "narrowly serve[] the state's interest in ensuring accountable governance." *Id.* at 1065.

As indicated in *Kallstrom*, the Sixth Circuit "will only balance an individual's interest in nondisclosure of informational privacy against the public's interest in and need for the invasion of privacy where the individual privacy interest is of constitutional dimension." 136 F.3d at 1061. This standard was established in the Sixth Circuit in *J.P. v. DeSanti*, 653 F.2d 1080 (6th Cir. 1981), which held that, "the fact that the Constitution protects several specific aspects of individual privacy does not mean that it protects all aspects of individual privacy" —"that not all rights of privacy or interests in nondisclosure of private information are of constitutional dimension, so as to require balancing government action against individual privacy." *Id.* at 1088, 1091. The "Constitution does not encompass a general right to nondisclosure of private information." *Id.* at 1090. The right of privacy is restricted to "those personal rights that can be deemed 'fundamental' or 'implicit in the concept of ordered liberty.'" *Id. See also Overstreet v. Lexington-Fayette Urban County Government*, 305 F.3d 566, 574 (6th Cir. 2002) ("[s]ince *DeSanti*, this Court has not strayed from its holding, and continues to evaluate privacy claims based on whether the interest sought to be protected is a fundamental interest or an interest implicit in the concept of ordered liberty").

earnings of its servants"). *See also Overstreet v. Lexington-Fayette Urban County Government*, 305 F.3d 566, 575 (6th Cir. 2002) ("[t]he privacy interest one may have in one's personal finances and real estate holdings is far afield from such intimate concerns" that are "fundamental" or "implicit in the concept of ordered liberty," and thus entitled to constitutional protection); *State ex rel. WBNS TV, Inc. v. Dues*, 101 Ohio St. 3d 406, 2004-Ohio-1497, 805 N.E.2d 1116, at ¶ 44 ("the constitutional right of privacy does not preclude disclosure of the sealed settlement figures" between hockey organizations and the estate of a child killed at a hockey game because there is no evidence establishing a high potential for victimization from disclosure and there is no legislative scheme protecting settlement figures submitted to and approved by probate courts).[25] Furthermore, even if a public employee had some right of privacy in his pay information, statutory language purporting to protect that privacy by restricting co-workers from accessing the information, while leaving intact the rights of all other persons to inspect and copy it under R.C. 149.43, would violate the fundamental principle of statutory construction that in interpreting a statute, a "just and reasonable result is intended." R.C. 1.47(C). *See State ex rel. Dispatch Printing Co. v. Wells*, 18 Ohio St. 3d at 384 ("[i]t is an axiom of judicial interpretation that statutes be construed to avoid unreasonable or absurd consequences").

Considering the courts' disregard for "purpose" language, and given that Ohio Const. art. II, § 34a and R.C. 4111.14(G) grant, rather than bar, rights of access, and that the courts have found no constitutional right of privacy in the pay information of public employees, we conclude that R.C. 4111.14(A)(4) does not deprive public employees of their right to inspect and copy the pay information of their co-workers as provided by R.C. 149.43.

Conclusion

Based on the foregoing, it is my opinion, and you are hereby advised that, Article II, § 34a of the Ohio Constitution and Am. Sub. H.B. 690, 126th Gen. A. (2006) (eff. April 4, 2007) do not render confidential information about a public employee's rate of pay, the number of hours worked by the employee, or the amount of compensation paid to the employee, nor do they

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[25] Again, the notion of an employee's "privacy" in his pay information may make more sense in terms of private employees, although it is beyond the scope of this opinion to discuss the extent of a private employee's right of privacy in the information maintained about him by his employer. *See generally State ex rel. Ohio AFL-CIO v. Ohio Bureau of Workers' Compensation*, 97 Ohio St. 3d 504, 2002-Ohio-6717, 780 N.E.2d 981, at ¶ 37 ("the nature of the employment of [U.S. treasury] employees meant that their expectations of privacy were markedly different from those of private citizens") (citing *National Treasury Employees Union v. Von Raab*, 489 U.S. 656 (1989)).

otherwise exempt this information from inspection and copying under R.C. 149.43. Therefore, any person, including any co-worker of a public employee, has the right under R.C. 149.43 to inspect and copy information about a public employee's pay rate, hours worked, and amounts paid.

Respectfully,

MARC DANN
Attorney General