

August 21, 2007

The Honorable Robin N. Piper
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Government Services Center, 11th Floor
P.O. Box 515
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SYLLABUS:

2007-025

1. The “good cause” standard described in 1991 Op. Att’y Gen. No. 91-003, under which the executive director of a public children services agency (PCSA) determines whether to grant access to child abuse or neglect investigation records included as confidential records under R.C. 5153.17, is applicable to all PCSA records described in R.C. 5153.17, including records pertaining to matters other than other than child abuse or neglect investigations. (1991 Op. Att’y Gen. No. 91-003, approved and clarified.)
2. A PCSA is responsible for keeping records described in R.C. 5153.17 confidential and may disclose them only as authorized by statute, in accordance with the “good cause” standard described in 1991 Op. Att’y Gen. No. 91-003. If, in conjunction with a criminal proceeding or investigation or a civil proceeding, a PCSA receives a subpoena requesting the disclosure of information that is confidential under R.C. 5153.17, the PCSA, in order to preserve the confidentiality prescribed by statute, may file a motion to quash the subpoena, thereby seeking from the court an in camera review of the PCSA’s records and a determination as to whether and to what extent the information may be disclosed.



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OPINION NO. 2007-025

The Honorable Robin N. Piper
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Dear Prosecutor Piper:

We have received your request for an opinion pertaining to the disclosure of records by a public children services agency (PCSA). You have asked the following questions:

1. Is the “good cause” standard, described in 1991 Op. Att’y Gen. No. 91-003, for the executive director of a PCSA to grant access to child abuse or neglect investigation records also applicable to other PCSA records within the scope of confidentiality described in R.C. 5153.17?
2. If the “good cause” standard is not applicable, what is the standard which the executive director should apply in exercising her discretion?
3. If the PCSA receives a subpoena for confidential information, issued in conjunction with a criminal proceeding or investigation, is the PCSA required to file a motion to quash the subpoena to protect the confidentiality of its records?
4. If the PCSA receives a subpoena for confidential information, issued in conjunction with a civil proceeding, is the PCSA required to file a motion to quash the subpoena to protect the confidentiality of its records?

On the basis of the analysis set forth below, we conclude that the “good cause” standard described in 1991 Op. Att’y Gen. No. 91-003, under which the executive director of a PCSA determines whether to grant access to child abuse or neglect investigation records included as confidential records under R.C. 5153.17, is applicable to all PCSA records described in R.C. 5153.17, including records pertaining to matters other than child abuse or neglect investigations. We conclude, further, that a PCSA is responsible for keeping records described in R.C. 5153.17 confidential and may disclose them only as authorized by statute, in

accordance with the “good cause” standard described in 1991 Op. Att’y Gen. No. 91-003. If, in conjunction with a criminal proceeding or investigation or a civil proceeding, a PCSA receives a subpoena requesting the disclosure of information that is confidential under R.C. 5153.17, the PCSA, in order to preserve the confidentiality prescribed by statute, may file a motion to quash the subpoena, thereby seeking from the court an in camera review of the PCSA’s records and a determination as to whether and to what extent the information may be disclosed.

Background Information

Your questions have arisen in connection with your responsibility to render legal advice to the Butler County Children Services Board, which is the designated PCSA for Butler County. See R.C. 309.09(A); R.C. 5153.01(A); R.C. 5153.02-.03; 1991 Op. Att’y Gen. No. 91-003, at 2-17 to 2-18. The questions pertain to statutory provisions establishing the confidentiality of certain records held by a PCSA.

In this regard, R.C. 5153.17 states:

The public children services agency shall prepare and keep written records of investigations of families, children, and foster homes, and of the care, training, and treatment afforded children, and shall prepare and keep such other records as are required by the department of job and family services. *Such records shall be confidential, but, except as provided by division (B) of section 3107.17 of the Revised Code,¹ shall be open to inspection* by the agency, the director of job and family services, and the director of the county department of job and family services, and *by other persons upon the written permission of the executive director.²* (Emphasis and footnotes added.)

You are concerned about the provisions of R.C. 5153.17 that authorize the executive director of a PCSA to grant written permission for the inspection of confidential records kept by the PCSA. Your concern relates to records other than those pertaining to child abuse or neglect investigations, particularly to records relating to the placement of children in foster homes, the care of children in foster care, and the recruitment, training, and supervision of foster parents.

¹ R.C. 3107.17(B)(1) states that, with certain exceptions, “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.”

² Effective September 21, 2006, the term “director” replaced “secretary.” Am. Sub. S.B. 238, 126th Gen. A. (2006) (eff. Sept. 21, 2006); *see also* R.C. 5153.01(B)(4).

Other provisions requiring confidentiality appear in R.C. 2151.421(H),³ providing (with

³ R.C. 2151.421(H) states:

(H)(1) Except as provided in divisions (H)(4) and (M) of this section, a report made under this section is confidential. The information provided in a report made pursuant to this section and the name of the person who made the report shall not be released for use, and shall not be used, as evidence in any civil action or proceeding brought against the person who made the report. In a criminal proceeding, the report is admissible in evidence in accordance with the Rules of Evidence and is subject to discovery in accordance with the Rules of Criminal Procedure.

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

(3) A person who knowingly makes or causes another person to make a false report under division (B) of this section that alleges that any person has committed an act or omission that resulted in a child being an abused child or a neglected child is guilty of a violation of section 2921.14 of the Revised Code.

(4) If a report is made pursuant to division (A) or (B) of this section and the child who is the subject of the report dies for any reason at any time after the report is made, but before the child attains eighteen years of age, the public children services agency or municipal or county peace officer to which the report was made or referred, on the request of the child fatality review board, shall submit a summary sheet of information providing a summary of the report to the review board of the county in which the deceased child resided at the time of death. On the request of the review board, the agency or peace officer may, at its discretion, make the report available to the review board. If the county served by the public children services agency is also served by a children's advocacy center and the report of alleged sexual abuse of a child or another type of abuse of a child is specified in the memorandum of understanding that creates the center as being within the center's jurisdiction, the agency or center shall perform the duties and functions specified in this division in accordance with the interagency agreement entered into under section 2151.428 [2151.42.8] of the Revised Code relative to that advocacy center.

(5) A public children services agency shall advise a person alleged to have inflicted abuse or neglect on a child who is the subject of a report made pursuant to this section, including a report alleging sexual abuse of a child or another type of abuse of a child referred to a children's advocacy center pursuant to an interagency agreement entered into under section 2151.428 [2151.42.8] of the Revised Code, in writing of the disposition of the investigation. The agency shall not provide to the person any information that identifies the person who made the report, statements of witnesses, or police or other investigative reports.

limited exceptions) that reports made under R.C. 2151.421 are confidential.⁴ The reports specified as confidential under R.C. 2151.421(H) have been described by the Ohio Supreme Court as reports “made by *individuals* to either public children-services agencies or peace officers (R.C. 2151.421[A] and [B]), by *public children-services agencies* to a central registry and a law-enforcement agency (R.C. 2151.421[F][2]), and by *public children-services agencies* to the county prosecuting attorney or city director of law (R.C. 2151.421[F][2]).” *State ex rel. Beacon Journal Publishing Co. v. City of Akron*, 104 Ohio St. 3d 399, 2004-Ohio-6557, 819 N.E.2d 1087, at ¶37; *see also* R.C. 2151.422 (certain information pertaining to a child who lives in a domestic violence or homeless shelter is confidential); R.C. 2151.423 (confidential information discovered during an investigation under R.C. 2151.421 or R.C. 2151.422 that is disclosed to a governmental entity for purposes of child protection remains confidential and not subject to disclosure by the entity receiving the information).

Your request letter sets forth a summary of the issues surrounding your questions, as follows:

Because the records described in these statutes are required to be kept confidential, they are excepted from the definition of “public records,” R.C. §149.43(A)(1)(v), and are not subject to inspection by the public under R.C. §149.43(B). *State, ex rel. Edinger v. Cuyahoga Cty. Dept. of Children & Family Services* (Cuyahoga Co. App. 2005), 2005-Ohio-5453 at ¶7, *See also, Renfro v. Cuyahoga Cty. Dept. of Human Serv.* (1990), 54 Ohio St.3d 25, 30 (Relators failed to establish a right, under R.C. §5153.17, to review report concerning Respondent’s investigation of child abuse allegations) and *State, ex rel. Sawyer v. Cuyahoga Cty. Dept. of Children & Family Services* (Cuyahoga Co. App. 2006), 2006-Ohio-395 at ¶6. Further, in its decision in *Renfro v. Cuyahoga Cty. Dept. of Human Serv.* (1990), 54 Ohio St.3d 25, 29, the Supreme Court stated that, “keeping foster care records confidential, not disclosing them,” was the PCSA’s “primary responsibility” under R.C. §5153.17.

On the other hand, numerous courts have held that the confidentiality afforded by R.C. §5153.17 and R.C. §2151.421(H) is not absolute, and must yield upon a finding of good cause for disclosure. *See, e.g., Renfro v. Cuyahoga Cty. Dept. of*

⁴ Violations of R.C. 2151.421(H)(2) are subject to criminal penalties. R.C. 2151.99(A)(1); *see also* 45 C.F.R. § 1340.14(i)(1) (2006) (including among the eligibility requirements for federal funding of child abuse and neglect prevention and treatment programs: “The State must provide by statute that all records concerning reports and reports of child abuse and neglect are confidential and that their unauthorized disclosure is a criminal offense”); [2006-2007 Ohio Monthly Record, vol. 1, Pamphlet No. 6, at 1841] Ohio Admin. Code 5101:2-34-38(A) (“[e]ach report and investigation of alleged child abuse or neglect is confidential and may be shared only when dissemination is authorized by this rule”).

Human Serv. (1990), 54 Ohio St.3d at 29; *Rankin v. Cuyahoga Cty. Dept. of Children & Family Services* (Cuyahoga Co. App. 2006) 2006-Ohio-6759 at ¶36; *Swartzentruber v. Orrville Grace Brethren Church* (Wayne Co. 2005), 163 Ohio App. 3d 96, 2005-Ohio-4264; *Grantz v. Discovery For Youth* (Butler Co. App. 2005), 2005-Ohio-680; *Hughes v. Butler Cty. Children Serv. Bd.* (Butler Co. App. 2002), 2002-Ohio-184; and *Johnson v. Johnson* (1999), 134 Ohio App.3d 579, 583.

However, R.C. §5153.17 fails to prescribe a standard to be applied by the PCSA's executive director when deciding whether to allow nonenumerated persons to inspect the agency's confidential records. In his opinion no. 91-003, your predecessor stated that, pursuant to R.C. §5153.17, a PCSA executive secretary may grant written permission for access to child abuse or neglect investigation records for good cause. This opinion further stated that, in the context of R.C. §5153.17, "good cause" may be shown to exist:

[W]here the best interests of the child require release of information contained in a public children services agency's child abuse or neglect investigation records or where denial of due process of law to one accused of child abuse or neglect would result from a refusal to grant access to such records.

This opinion of the Attorney General, as well as all of the above-cited court decisions, appear to expressly relate only to decisions regarding extra-agency access to records of investigations concerning child abuse and neglect. However, the confidentiality requirement of R.C. §5153.17 applies to PCSA records concerning "investigations of families, children, and foster homes, and of the care, training, and treatment afforded children." This delineation of confidential records appears to include more PCSA records than simply its records relating to child abuse and neglect investigations.

Following the recent murder of a child by his foster parents while the child was in the temporary custody of the Butler County Children Services Board, our office has received numerous requests for advice from the agency concerning access to records which relate to the placement of children in foster homes, the care of children in foster care and the recruitment, training and supervision of foster parents. We have been advising the Executive Director of the Children Services Board to apply the "good cause" standard described in OAG No. 91-003. However, because that opinion expressly applies only to the disclosure of "information contained in a public children services agency's child abuse or neglect investigation records," we would like to receive additional guidance concerning the proper exercise of the executive director's discretion, under R.C. §5153.17, to grant confidential records access to persons outside of the agency.

“Good Cause” Standard for Granting Access to PCSA Records Under R.C. 5153.17

As outlined in your request letter, records described in R.C. 5153.17 and R.C. 2151.421(H) are excepted from the definition of “public records” appearing in R.C. 149.43(A)(1) because their release is prohibited by law. *See* R.C. 149.43(A)(1)(v). Therefore, these records are not required to be made available for inspection by the public under R.C. 149.43(B). *See, e.g., State ex rel. Beacon Journal Publishing Co. v. City of Akron* at ¶30; *State ex rel. Edinger v. Cuyahoga County Dep’t of Children & Family Services*, Cuyahoga App. No. 86341, 2005-Ohio-5453, at ¶6-7; *see also State ex rel. Sawyer v. Cuyahoga County Children Services*, Cuyahoga App. No. 86436, 2006-Ohio-395, at ¶6, *aff’d*, 110 Ohio St. 3d 343, 2006-Ohio-4574, 853 N.E.2d 657.

The provisions of R.C. 5153.17 and R.C. 2151.421(H) grant confidentiality to records of a PCSA, but it has been established that the confidentiality is not absolute. *See, e.g., State ex rel. Renfro v. Cuyahoga County Dep’t of Human Services*, 54 Ohio St. 3d 25, 29, 560 N.E.2d 230 (1990); *Hughes v. Butler County Children Services Bd.*, Butler App. No. CA2001-07-178, 2002-Ohio-184; *Johnson v. Johnson*, 134 Ohio App. 3d 579, 583, 731 N.E.2d 1144 (Union County 1999); *Sharpe v. Sharpe*, 85 Ohio App. 3d 638, 642, 620 N.E.2d 916 (Lake County 1993). To gain access to records kept under R.C. 5153.17, it is necessary for a person “to demonstrate ‘good cause’ that outweighs any need to keep the records confidential.” *Wiley v. Summit County Children Services*, Summit App. No. 23372, 2007-Ohio-1476, at ¶10.

1991 Op. Att’y Gen. No. 91-003 considered the standard for disclosure of records under R.C. 5153.17. The first three paragraphs of the syllabus of 1991 Op. Att’y Gen. No. 91-003⁵ state:

⁵ The remaining paragraphs of the syllabus of 1991 Op. Att’y Gen. No. 91-003 read as follows:

4. Child abuse and neglect investigation records maintained by public children services agencies do not constitute “public records” within the meaning of R.C. 149.43 to which the right of public access attaches. Records of child abuse or neglect investigations under R.C. 2151.42(H)(1) and R.C. 5153.17 are “records the release of which is prohibited by state law” under R.C. 149.43(A)(1).
5. Pursuant to R.C. 2151.141, when a complaint alleging abuse, neglect, or dependency of a child is filed under R.C. 2151.27, a request directed to a public children services agency or the prosecuting attorney for “any records related to the child” must be granted or denied by following the procedures set forth in R.C. 2151.141.

1. Pursuant to R.C. 5153.17, the county prosecuting attorney may release information contained in a public children services agency's child abuse or neglect investigation file only with the written permission of the public children services agency executive secretary [now executive director].
2. Pursuant to R.C. 5153.17, a public children services agency executive secretary [now executive director] may grant written permission for access to child abuse or neglect investigation records for good cause.
3. "Good cause," for purposes of R.C. 5153.17, may be shown to exist where the best interests of the child require the release of information contained in a public children services agency's child abuse or neglect investigation records or where denial of due process of law to one accused of child abuse or neglect would result from a refusal to grant access to such records.

Under the analysis set forth in 1991 Op. Att'y Gen. No. 91-003, records described in R.C. 5153.17 may be released to persons other than those listed in the statute only upon the written permission of the executive director of the PCSA granted upon a finding of good cause, and good cause may be shown to exist where the best interests of the child require the release of information or where denial of due process of law would result from a refusal to grant access to the records. Although 1991 Op. Att'y Gen. No. 91-003 directly addressed only the disclosure of child abuse or neglect investigation records, the principles behind the "good cause" standard set forth in that opinion are of general application, and the language of R.C. 5153.17 supports the application of those principles to other PCSA records described in R.C. 5153.17.

The "good cause" standard described in 1991 Op. Att'y Gen. No. 91-003 has been adopted by Ohio courts and cited in numerous judicial decisions. *See, e.g., Swartzentruber v. Orrville Grace Brethren Church*, 163 Ohio App. 3d 96, 100-01, 2005-Ohio-4264, 863 N.E.2d 619, at ¶9 (Wayne County); *State v. Sahady*, Cuyahoga App. No. 83247, 2004-Ohio-3481, at ¶31; *Child Care Provider Certification Dep't v. Harris*, Cuyahoga App. No. 82966, 2003-Ohio-6500, at ¶13; *Johnson v. Johnson*, 134 Ohio App. 3d at 583; *In re Henderson*, No. 96-L-0068, 1997 Ohio App. LEXIS 5333, at *10 (Lake County Nov. 28, 1997). The "good cause" standard has been applied generally to PCSA records described in R.C. 5153.17, including both records pertaining to child abuse or neglect investigations and records pertaining to other matters. For example, in *Rankin v. Cuyahoga County Dep't of Children & Family Services*, Cuyahoga App. No. 86620, 2006-Ohio-6759, *discretionary appeal allowed, in part, on other grounds*, 113 Ohio St. 3d 1512, 2007-Ohio-2208, 866 N.E.2d 511, the court considered the disclosure under a discovery request in a civil action of various documents of the PCSA, including documents specifically concerning an incident of child abuse and generally concerning practices and procedures of the agency regarding supervised visits. The court applied the "good cause"

standard set forth in 1991 Op. Att’y Gen. No. 91-003 and adopted in *Johnson v. Johnson*⁶ and found that good cause was shown, stating that the best interests of the minor victim would be served by holding people and entities responsible for any deficiencies in her supervision and finding that general disclosure of DCFS’s practices and procedures concerning supervised visits would not interfere with the protections due to DCFS employees. *Rankin v. Cuyahoga County Dep’t of Children & Family Services* at ¶36-41. Hence, the court applied the “good cause” standard to documents other than those pertaining to investigations of child abuse.

We conclude, accordingly, that the “good cause” standard described in 1991 Op. Att’y Gen. No. 91-003, under which the executive director of a PCSA determines whether to grant access to child abuse or neglect investigation records included as confidential records under R.C. 5153.17, is applicable to all PCSA records described in R.C. 5153.17, including records pertaining to matters other than other than child abuse or neglect investigations. In this regard, we approve and clarify 1991 Op. Att’y Gen. No. 91-003. In light of this conclusion, it is not necessary to address your second question.

PCSA Response to Subpoena for Confidential Information in Conjunction with a Criminal Proceeding or Investigation or a Civil Proceeding

Your remaining questions concern the action that a PCSA takes when it receives a subpoena for confidential information issued from a court in conjunction with a criminal proceeding or investigation or in conjunction with a civil proceeding. You have asked whether, in these circumstances, the PCSA is required to file with the court a motion to quash the subpoena.

As discussed above, R.C. 5153.17 makes certain records of a PCSA confidential, but subject to disclosure as prescribed by statute. The records described in R.C. 5153.17 – records of investigations of families, children, and foster homes, and of the care, training, and treatment afforded children, and other records required by the Ohio Department of Job and Family Services – are open to inspection by the agency, the Director of Job and Family Services, and the director of the county department of job and family services. They are made available to other persons only upon the written permission of the executive director of the PCSA.

⁶ *Johnson v. Johnson*, 134 Ohio App. 3d 579, 583, 731 N.E. 2d 1144 (Union County 1999), states:

Therefore, pursuant to R.C. 5153.17, although the children’s services agency has a duty to keep child-abuse records confidential, such confidentiality is not absolute. See, also, *Sharpe v. Sharpe* (1993), 85 Ohio App.3d 638, 620 N.E.2d 916. However, access to such records will only be granted by the executive secretary on a showing of good cause. 1991 Ohio Atty.Gen.Ops. No. 91-003. Good cause is shown “[w]hen it is in the best interests of the child or when the due process rights of other subjects of the record are implicated.” *Id.*

Although R.C. 5153.17 does not indicate what standard is to be applied by the executive director in determining whether to grant written permission for the inspection of records, the “good cause” standard, as described in 1991 Op. Att’y Gen. No. 91-003 and discussed above, has been adopted by the courts. *See, e.g., Wiley v. Summit County Children Services* at ¶10. The determination as to whether there is “good cause” to disclose records under R.C. 5153.17 involves two issues – the issue as to whether disclosure is in the best interests of the child, and the issue as to whether due process rights are implicated. *Swartzentruber v. Orrville Grace Brethren Church* at ¶9; *Johnson v. Johnson*, 134 Ohio App. 3d at 583; 1991 Op. Att’y Gen. No. 91-003, at 2-19 to 2-20.

You have asked about a situation in which, in conjunction with a criminal proceeding or investigation or a civil proceeding, a PCSA receives a subpoena requesting the disclosure of information that is confidential under R.C. 5153.17. As you have suggested, one manner in which a PCSA may respond to a subpoena is by filing with the court a motion to quash the subpoena.⁷

The filing of a motion to quash a subpoena for confidential information places upon the court the responsibility of making a determination regarding the disclosure of the requested information. The procedure by which a court makes this determination was described in *Child Care Provider Certification Dep’t v. Harris* at ¶11:

Although the CCDCFS’s records are afforded confidentiality under R.C. 5153.17 and R.C. 2151.421(H)(1), this confidentiality is not absolute. *See Johnson v. Johnson* (1999), 134 Ohio App.3d 579, 583; *Sharpe v. Sharpe* (1993), 85 Ohio App.3d 638. The proper procedure for determining the availability of such records is for the trial court to conduct an in camera inspection to determine the following: 1) whether the records are necessary and relevant to the pending action; 2) whether good cause has been shown by the person seeking disclosure; and 3) whether their admission outweighs the confidentiality considerations set

⁷ Applicable court rules in both state and federal courts and in both criminal and civil matters establish procedures under which the court, for the purpose of protecting confidential information from unwarranted disclosure, may quash or modify a subpoena. *See* Fed. R. Civ. P. 45(c)(3)(A)(iii); Fed. R. Crim. P. 17(c); Ohio R. Civ. P. 45(C)(3)(b) (the court, on timely motion, may quash or modify a subpoena, or order production, only under specified conditions, including if the subpoena “[r]equires disclosure of privileged or otherwise protected matter and no exception or waiver applies”); Ohio R. Crim. P. 17(C) (the court, on timely motion, “may quash or modify the subpoena if compliance would be unreasonable or oppressive”); Ohio R. Juv. P. 17(D)(3)(b).

forth in R.C. 5153.17 and R.C. 2151.421(H)(1). *Johnson*, 134 Ohio App.3d at 585.

Accord Rankin v. Cuyahoga County Dep't of Children & Family Services at ¶37; *Swartzentruber v. Orrville Grace Brethren Church* at ¶9; *State v. Sahady* at ¶29-31. A motion to quash thus submits the matter to the court for an in camera examination of records and a determination regarding disclosure. *See, e.g., In re Henderson*, 1997 Ohio App. LEXIS 5333, at *10-11.

This procedure for in camera review of records by the court has been described in terms applicable to all records kept under R.C. 5153.17. *See Child Care Provider Certification Dep't v. Harris* at ¶11; *Rankin v. Cuyahoga County Dep't of Children & Family Services* at ¶37. It was applied in the *Harris* case to records pertaining to the administrative decision to revoke Harris's child care provider certification on the basis of neglect. The same procedure for determining when confidential records may be disclosed was applied in *Grantz v. Discovery for Youth*, Butler App. Nos. CA2004-09-216, CA2004-09-217, 2005-Ohio-680, at ¶19-21, to a discovery request for confidential juvenile records and investigation records submitted to a private noncustodial agency in a case alleging negligence.

This in camera procedure for determining when confidential records may be disclosed has also been applied in criminal cases. For example, in *State v. Meadows*, Scioto App. No. 99CA2651, 2001-Ohio-2510, at 22-25, the court found that, when a person accused of murder made a specific request for PCSA records, the trial court was required to conduct an in camera inspection of the documents to determine if they contained evidence material to the defense. This application of R.C. 5153.17 is consistent with the United States Supreme Court's decision in *Pennsylvania v. Ritchie*, 480 U.S. 39, 57-61 (1987), establishing that an accused is entitled to receive from confidential children services records any information that is material to the defense, and that this right is protected if the trial court conducts an in camera inspection of the records to make a determination regarding material evidence. *See also Sharpe v. Sharpe*, 85 Ohio App. 3d at 642. The in camera review by the court may be instituted, in response to a subpoena for the production of records, by a refusal to comply with the subpoena followed by a request for sanctioning (as in the *Ritchie* case, *see Pennsylvania v. Ritchie*, 480 U.S. at 43-44) or by a motion to quash the subpoena, as you have indicated.

It is, thus, evident that the executive director of a PCSA is empowered, in appropriate circumstances, to direct that a motion to quash a subpoena be filed, thereby seeking from the court an in camera review of the PCSA's records and a determination as to whether and to what extent the requested information may be disclosed. Indeed, there are many circumstances in which the filing of a motion to quash is necessary to protect the confidentiality of the records of the PCSA. *See generally Swartzentruber v. Orrville Grace Brethren Church* (motion for a protective order urging the court to quash a subpoena in a civil suit seeking PCSA confidential records of child alleged to have committed sex abuse to determine if child had been sexually abused); *Grantz v. Discovery for Youth* at ¶21 (judicial determination regarding the disclosure of confidential information in conjunction with a discovery request provides the parties "with an opportunity to have any disputed materials reviewed in camera at which time they can argue the

relevance of the evidence and factors weighing for or against the statutory confidentiality considerations”); *State v. Dixon*, Richland App. No. 03 CA 75, 2004-Ohio-3940, at ¶13 (in response to a motion to quash a subpoena issued during pretrial discovery, the trial court duly conducted an in camera review of PCSA records and properly determined that disclosure would not have outweighed the confidentiality considerations of R.C. 5153.17); *State v. Sahady* at ¶33-34 (in connection with a request by an offender for discovery prior to his sexual offender classification hearing, the trial court abused its discretion by ordering the PCSA to produce documents without conducting a prior in camera review).⁸

The determination of what meets the “good cause” standard is often difficult, and court involvement in this process may be desirable in many instances. When a subpoena requesting the production of confidential records is before a court, the court is able to perform an in camera review of the confidential records and make a judicial determination regarding good cause. *See, e.g., Sharpe v. Sharpe*. Submitting the matter to the court protects the PCSA from improperly disclosing confidential materials or from failing to disclose when disclosure is warranted. Thus, it is often advisable for the PCSA to file a motion to quash in response to a subpoena for confidential records, thereby seeking an in camera review by the court.

It must be concluded, however, that a motion to quash is not in every instance the only means by which a PCSA may properly respond to a subpoena for the disclosure of information

⁸ *In re Henderson*, No. 96-L-0068, 1997 Ohio App. LEXIS 5333 (Lake County Nov. 28, 1997), cited the “good cause” standard described in 1991 Op. Att’y Gen. No. 91-003 and quoted a concurring opinion in *Davis v. Trumbull County Children Services Board (In re Barzak)*, 24 Ohio App. 3d 180, 186, 493 N.E.2d 1011 (Trumbull County 1985), as follows:

“Whether the information contained in the confidential files of appellee, Trumbull County Children Services Board, is disclosed to opposing counsel should be a matter within the sound discretion of the trial court. The decision should not rest with the agency and/or its personnel. [. . .] While an individual’s right to privacy must be protected, it is even more important to ensure that instances of child abuse are made known. A balancing test, applied by the trial court[,] would permit some or all information to remain privileged and confidential in appropriate situations while permitting disclosure in others. It should be remembered that an ‘open door’ approach to agency file matter could well cause revelations of privacy matters wholly irrelevant to a given instance of an allegation of child abuse.” 24 Ohio App. 3d at 186 (Ford, J., concurring).

In re Henderson, 1997 Ohio App. LEXIS 5333, at *10-11 (brackets indicate material omitted by the *Henderson* court). The *Henderson* case involved an appeal asserting that the trial court refused to grant complete discovery. The appellate court approved the trial court’s decision to perform an in camera review and found no abuse of discretion. *Id.* at *12.

that is confidential under R.C. 5153.17. By giving the executive director authority to disclose information if good cause is demonstrated, R.C. 5153.17 permits the executive director to disclose requested information upon a finding of good cause, regardless of whether the finding is made in response to a subpoena. Thus, even as the executive director may disclose confidential information upon a simple request if good cause is demonstrated in accordance with R.C. 5153.17, the executive director may also disclose information in response to a subpoena if good cause is demonstrated in accordance with R.C. 5153.17.

This basic capacity of an executive director to comply with a subpoena requesting the disclosure of information when the disclosure comports with the confidentiality restrictions imposed by R.C. 5153.17 is consistent with the standards set forth in the various rules of court, which provide for the protection of confidential information through the quashing or modification of a subpoena if the subpoena “[r]equires disclosure of privileged or otherwise protected matter and no exception or waiver applies,” Ohio R. Civ. P. 45(C)(3)(b); *see also* Fed. R. Civ. P. 45(c)(3)(A)(iii), or “if compliance would be unreasonable or oppressive,” Ohio R. Crim. P. 17(C); *see also* Fed. R. Crim. P. 17(c); Ohio R. Juv. P. 17(D)(3)(b). In addition, it is consistent with the duty of the PCSA to protect the confidentiality of its records under the standards established by law. The various court cases cited in this opinion involve situations in which questions regarding the disclosure of confidential records have been submitted to the courts for decision. The cases address those situations and do not indicate that a PCSA may not resolve a request for disclosure (arising under a subpoena or otherwise) through application of the confidentiality standards of R.C. 5153.17 without seeking a determination by the court.

Further, although a PCSA may file a motion to quash as discussed above, there are circumstances in which less formal action may be effective to protect the statutorily-mandated confidentiality of PCSA records. For example, discussions between the PCSA and the requesting party may result in the withdrawal of a subpoena. In other circumstances, the submission of objections may result in a finding that the subpoena is defective. The PCSA has the responsibility in each instance to determine whether it is necessary, in order to protect the confidentiality prescribed by R.C. 5153.17, to file a motion to quash a subpoena requesting the disclosure of confidential information.

We conclude, accordingly, that a PCSA is responsible for keeping records described in R.C. 5153.17 confidential and may disclose them only as authorized by statute, in accordance with the “good cause” standard described in 1991 Op. Att’y Gen. No. 91-003. If, in conjunction with a criminal proceeding or investigation or a civil proceeding, a PCSA receives a subpoena requesting the disclosure of information that is confidential under R.C. 5153.17, the PCSA, in order to preserve the confidentiality prescribed by statute, may file a motion to quash the subpoena, thereby seeking from the court an *in camera* review of the PCSA’s records and a determination as to whether and to what extent the information may be disclosed.

Conclusions

For the reasons discussed above, it is my opinion, and you are advised, as follows:

1. The “good cause” standard described in 1991 Op. Att’y Gen. No. 91-003, under which the executive director of a public children services agency (PCSA) determines whether to grant access to child abuse or neglect investigation records included as confidential records under R.C. 5153.17, is applicable to all PCSA records described in R.C. 5153.17, including records pertaining to matters other than other than child abuse or neglect investigations. (1991 Op. Att’y Gen. No. 91-003, approved and clarified.)
2. A PCSA is responsible for keeping records described in R.C. 5153.17 confidential and may disclose them only as authorized by statute, in accordance with the “good cause” standard described in 1991 Op. Att’y Gen. No. 91-003. If, in conjunction with a criminal proceeding or investigation or a civil proceeding, a PCSA receives a subpoena requesting the disclosure of information that is confidential under R.C. 5153.17, the PCSA, in order to preserve the confidentiality prescribed by statute, may file a motion to quash the subpoena, thereby seeking from the court an in camera review of the PCSA’s records and a determination as to whether and to what extent the information may be disclosed.

Respectfully,

A handwritten signature in black ink, appearing to read "Marc Dann", with a stylized flourish at the end.

MARC DANN
Attorney General