

November 9, 2007

The Honorable Dennis Watkins  
Trumbull County Prosecuting Attorney  
Administration Building, Fourth Floor  
160 High Street N.W.  
Warren, Ohio 44481-1092

SYLLABUS:

2007-039

1. R.C. 2923.129(B)(2)(a) prohibits a journalist from making a reproduction by any means, other than through his own mental processes, of the information the journalist is permitted to view under that statute.
2. A sheriff may exercise his discretion in determining a reasonable manner by which a journalist may view, but not copy, the information described in R.C. 2923.129(B)(2)(a), so long as the sheriff maintains the confidentiality of the other information “relative to the issuance, renewal, suspension, or revocation of a license to carry a concealed handgun or the issuance, suspension, or revocation of a temporary emergency license to carry a concealed handgun,” R.C. 2923.129(B)(1).
3. The prohibition in R.C. 2923.129(B)(1) against the release or other dissemination of the information described therein prohibits anyone, subject to the exception in R.C. 2923.129(B)(2), from revealing, disclosing, or otherwise making known any of the information made confidential by that statute “unless required to do so pursuant to a court order,” or unless a statute specifically authorizes or requires other uses of such information.
4. R.C. 2923.129(B)(1) does not prohibit a newspaper from publishing information that a journalist has viewed in accordance with R.C. 2923.129(B)(2).



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OPINION NO. 2007-039

The Honorable Dennis Watkins  
Trumbull County Prosecuting Attorney  
Administration Building, Fourth Floor  
160 High Street N.W.  
Warren, Ohio 44481-1092

Dear Prosecutor Watkins:

You have submitted a request for an opinion concerning the duties of a county sheriff with respect to records related to licenses to carry concealed handguns. After speaking with a member of your staff, we understand your questions to be, as follows:

1. What does the word “copy” in the context of § R.C. 2923.129 include? Is the term limited to “exact” copies such as photocopies or photographs, or does it extend to the reproduction of the information, such as hand copying, handwritten notes, dictation, etc.?
2. What is a sheriff legally permitted to allow a journalist to do when presented with a proper written request to view the information?
3. What does “release or otherwise disseminate” mean pursuant to § R.C. 2923.129? If a newspaper obtains information under R.C. 2923.129(B)(2) and publishes or broadcasts it, has the company “release[d] or otherwise disseminate[d] records that are confidential” subjecting the journalist and/or media to legal process under 2923.129?

As explained in your opinion request, Sub. H.B. 9, 126th Gen. A. (2006) (eff. in pertinent part, Sept. 29, 2007), made numerous changes to Ohio’s public records law, R.C. 149.43, and related statutes. The changes with which you are concerned arise from Sub. H.B. 9’s amendment of R.C. 2923.129(B), concerning the powers and duties of county sheriffs with respect to information they keep pertaining to licenses to carry concealed handguns.

**R.C. 149.43 and R.C. 2923.129**

Before answering your specific questions, it is useful to summarize the public records requirements of R.C. 149.43 and the operation of R.C. 2923.129. As a general rule, R.C. 149.43(B) requires a public office<sup>1</sup> to make all public records available to anyone for inspection at all reasonable times during normal business hours, and, upon request, to make copies of such records, at cost, within a reasonable period of time. *See generally* R.C. 149.43(A)(1) (defining a “public record,” as meaning, with numerous exceptions, “records kept by any public office”).<sup>2</sup> The county sheriff’s office is a “public office” to which R.C. 149.43 applies. *See State ex rel. Wilson-Simmons v. Lake County Sheriff’s Dep’t*, 82 Ohio St. 3d 37, 693 N.E.2d 789 (1998).

R.C. 2923.129, however, establishes an exception to the public records requirements of R.C. 149.43 for certain information kept by a county sheriff. As amended by Sub. H.B. 9, R.C. 2923.129(B)(1) describes the information a sheriff keeps related to licenses to carry concealed handguns,<sup>3</sup> in part, as follows:

Notwithstanding section 149.43 of the Revised Code, except as provided in division (B)(2) of this section, the *records that a sheriff keeps relative to the issuance, renewal, suspension, or revocation of a license to carry a concealed handgun or the issuance, suspension, or revocation of a temporary emergency license to carry a concealed handgun, including, but not limited to, completed applications for the issuance or renewal of a license, completed affidavits submitted regarding an application for a temporary emergency license, reports of criminal records checks and incompetency records checks under [R.C. 311.41], and applicants’ social security numbers and fingerprints that are obtained under*

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<sup>1</sup> For purposes of R.C. 149.43, the term “public office” includes, among other entities, all political subdivisions and any “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).

<sup>2</sup> As used in R.C. 149.43, the term “records” includes “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.” R.C. 149.011(G).

<sup>3</sup> The application process for the issuance of a license to carry a concealed handgun is prescribed by R.C. 2923.125. Division (B) sets forth a list of items each applicant must submit to the county sheriff as part of the application process: a completed application form, a nonrefundable license fee, a recent color photograph of the applicant, a competency certification, certification that the applicant has read the pamphlet prepared by the Ohio Peace Officer Training Commission, and a set of fingerprints.

[R.C. 311.41(A)],<sup>4</sup> are *confidential and are not public records*. Except as provided in division (B)(2) of this section, *no person shall release or otherwise disseminate* records that are confidential under this division *unless required to do so pursuant to a court order*. (Emphasis and footnote added.)

Thus, irrespective of R.C. 149.43 and subject to the exception for inspections by journalists under R.C. 2923.129(B)(2), R.C. 2923.29(B)(1) not only excludes from the meaning of the term “public records,” but also makes confidential, the records kept by a county sheriff “relative to the issuance, renewal, suspension, or revocation of a license to carry a concealed handgun or the issuance, suspension, or revocation of a temporary emergency license to carry a concealed handgun.” See R.C. 149.43(A)(1)(v) (excluding from the term “public record” “[r]ecords the release of which is prohibited by state or federal law”). See generally R.C. 311.41 (procedure governing sheriff’s performance of criminal records check and incompetency check of applicant).

The journalist access exception to the confidential and non-public record status R.C. 2923.129(B)(1) affords records held by a county sheriff “relative to the issuance, renewal, suspension, or revocation of a license to carry a concealed handgun or the issuance, suspension, or revocation of a temporary emergency license to carry a concealed handgun” is prescribed by R.C. 2923.129(B)(2), in part, as follows:

(a) A journalist, on or after April 8, 2004, may submit to a sheriff a signed, written request to view the *name, county of residence, and date of birth of each person* to whom the sheriff has issued a license or replacement license to carry a concealed handgun, renewed a license to carry a concealed handgun, or issued a temporary emergency license or replacement temporary emergency license to carry a concealed handgun under section 2923.125 or 2923.1213 of the Revised Code, or a signed, written request to view the name, county of residence, and date of birth of each person for whom the sheriff has suspended or revoked a license to carry a concealed handgun or a temporary emergency license to carry a concealed handgun under section 2923.128 of the Revised Code. The request shall include the journalist’s name and title, shall include the name and address of the journalist’s employer, and shall state that disclosure of the information sought would be in the public interest. If a journalist submits a signed, written request to the sheriff to view the information described in this division, the sheriff shall grant the journalist’s request. *The journalist shall not copy the name, county of*

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<sup>4</sup> R.C. 311.41 establishes the procedure by which a sheriff conducts a criminal records check and an incompetency records check for an applicant for a license to carry a concealed handgun. Division (A) of that statute requires an applicant to submit to fingerprinting. As specified in R.C. 311.41(A)(1), “[t]he fingerprints so obtained, along with the applicant’s social security number, shall be used to conduct the criminal records check and the incompetency records check.”

*residence, or date of birth of each person to or for whom the sheriff has issued, suspended, or revoked a license described in this division.* (Emphasis added.)

Thus, anyone who is a “journalist,” as defined in R.C. 2923.129(B)(2)(b),<sup>5</sup> may submit to a sheriff a signed, written request, including the journalist’s name and title, the name and address of the journalist’s employer, and a statement that “disclosure of the information sought would be in the public interest,” to view the name, county of residence, and date of birth of each person to whom the sheriff has issued “a license or replacement license to carry a concealed handgun, renewed a license to carry a concealed handgun, or issued a temporary emergency license or replacement temporary emergency license to carry a concealed handgun under [R.C. 2923.125 or R.C. 2923.1213]” or whose license to carry a concealed handgun or a temporary emergency license to carry a concealed handgun has been suspended or revoked under R.C. 2923.128. Upon submission of such a request, the sheriff has a duty to permit the journalist to view the requested information. Although R.C. 2923.129(B)(2)(a) authorizes a journalist to view the name, county of residence, and date of birth of the persons described therein, it also prohibits a journalist from copying any such information.

**Prohibition Against Journalist’s Copying Information Viewed under R.C. 2923.129(B)(2)(a)**

Having reviewed the statutory framework in which your questions arise, we now turn to your first question, which asks the meaning of the word “copy,” as used in the following portion of R.C. 2923.129(B)(2)(a): “The journalist *shall not copy* the name, county of residence, or date of birth of each person to or for whom the sheriff has issued, suspended, or revoked a license described in this division.” (Emphasis added.) You ask whether the word “copy” refers only to “‘exact’ copies such as photocopies or photographs, or does it extend to the reproduction of the information, such as hand copying, handwritten notes, dictation, etc.?”

The General Assembly has not defined the word “copy,” as used in R.C. 2923.129(B). We must, therefore, look to the common meaning of that word. R.C. 1.42. *The American Heritage Dictionary* 322 (2d college ed. 1982), defines the noun “copy” as meaning, in part, “[a]n imitation or reproduction of something original; duplicate,” and the transitive verb “copy” as meaning, in part, “[t]o make a copy of.” Further indication of the meaning of the word “copy,” as used in R.C. 2923.129(B)(2)(a), is found in examining the remaining language of that statute. *See generally State v. Williams*, 79 Ohio St. 3d 459, 462, 683 N.E.2d 1126 (1997) (“[w]ords and phrases in a statute must be read in context of the whole statute”). Within R.C. 2923.129(B)(2)(a), the General Assembly has defined, by use of the word “view,” the actions a

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<sup>5</sup> As used in R.C. 2923.129(B)(2), the word “journalist” means “a person engaged in, connected with, or employed by any news medium, including a newspaper, magazine, press association, news agency, or wire service, a radio or television station, or a similar medium, for the purpose of gathering, processing, transmitting, compiling, editing, or disseminating information for the general public.” R.C. 2923.129(B)(2)(b).

journalist may take with respect to the described names, counties of residence, and dates of birth. In contradistinction, the word “copy” defines the actions a journalist may not take with respect to such names, counties of residence, and dates of birth. According to *The American Heritage Dictionary* at 1348, the verb “view,” means, in part, “[t]o see; behold.” Because the only actions a journalist may take with respect to the names, counties of residence, and dates of birth of those described in R.C. 2923.129(B)(2)(a) is to see such information, we read the prohibition against a journalist’s copying such information as applying to the reproduction of the viewed information, by any means, including those you specifically mention—hand copying, handwritten notes, and dictation.<sup>6</sup>

In answer to your first question, we conclude that R.C. 2923.129(B)(2)(a) prohibits a journalist from making a reproduction by any means, other than through his own mental processes, of the information the journalist is permitted to view under that statute.

#### **Authority of Journalist to View Information under R.C. 2923.129(B)(2)(a)**

Your second question asks, “[w]hat is a sheriff legally permitted to allow a journalist to do when presented with a proper written request to view the information [described in R.C. 2923.129(B)(2)(a)]?” R.C. 2923.129(B)(2)(a) describes the duty of a county sheriff, upon a journalist’s submission of a signed, written request to view the information described therein, as follows: “the sheriff shall grant the journalist’s request.” The statute does not further prescribe the manner in which the sheriff must allow a journalist to view the requested information. We must assume, therefore, that the General Assembly intended that a sheriff exercise his discretion in determining a reasonable method by which a journalist may view, without copying, the names, dates of birth, and counties of residence of the persons described in R.C. 2923.129(B)(2)(a), while also maintaining the confidentiality of any other information described in R.C. 2923.129(B)(1) concerning those persons. See generally *Northwestern Ohio Building & Construction Trades Council v. Conrad*, 92 Ohio St. 3d 282, 287, 750 N.E.2d 130 (2001) (“[i]t is axiomatic that if a statute provides the authority for an administrative agency to perform a specified act, but does not provide the details by which the act should be performed, the agency is to perform the act in a reasonable manner based upon a reasonable construction of the statutory scheme”); *Jewett v. Valley Ry. Co.*, 34 Ohio St. 601, 608 (1878) (“[w]here authority is given to do a specified thing, but the precise mode of performing it is not prescribed, the presumption is that the legislature intended the party might perform it in a reasonable manner”).<sup>7</sup>

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<sup>6</sup> Of course, any information that a journalist views under R.C. 2923.129(B)(2)(a) and commits to memory does not constitute “copying” for purposes of that statute.

<sup>7</sup> For example, a sheriff may wish to create a template that enables a journalist to view only the name, date of birth, and county of residence of licensees. If the sheriff maintains this information in electronic form, it may be possible to create a program that will retrieve only the three elements of information a journalist may view with respect to licensees.

In answer to your second question, we conclude that a sheriff may exercise his discretion in determining a reasonable manner by which a journalist may view, but not copy, the information described in R.C. 2923.129(B)(2)(a), so long as the sheriff maintains the confidentiality of the other information “relative to the issuance, renewal, suspension, or revocation of a license to carry a concealed handgun or the issuance, suspension, or revocation of a temporary emergency license to carry a concealed handgun,” R.C. 2923.129(B)(1).

### **Release or Dissemination of Information under R.C. 2923.129(B)(1)**

Your third question asks about the meaning of the prohibition in R.C. 2923.129(B)(1) against the release or dissemination of the information made confidential by that statute. According to R.C. 2923.129(B)(1), “[e]xcept as provided in [R.C. 2923.129(B)(2)], no person shall *release or otherwise disseminate* records that are confidential under this division unless required to do so pursuant to a court order.”<sup>8</sup> (Emphasis added.) You ask about the meaning of the words “release” and “disseminate,” as used in R.C. 2923.129(B)(1).

The General Assembly has not defined the terms “release” or “disseminate” for purposes of R.C. 2923.129(B). The intention of the General Assembly in using these words may be discerned, in part, by examining the statutory framework in which the words appear. *See generally State v. Williams*. The prohibition contained in R.C. 2923.129(B)(1) immediately follows the portion of the statute that makes confidential “the records that a sheriff keeps relative to the issuance, renewal, suspension, or revocation of a license to carry a concealed handgun or the issuance, suspension, or revocation of a temporary emergency license to carry a concealed handgun.” The General Assembly’s use of the words “release” and “disseminate” to describe the activity prohibited by R.C. 2923.129(B)(1), therefore, suggests that the prohibition is intended to protect the confidentiality afforded such information by R.C. 2923.129(B)(1), subject, of course, to the exception created by R.C. 2923.129(B)(2).

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<sup>8</sup> As you mentioned, R.C. 2923.129(E) makes violation of R.C. 2923.129(B) a crime, as follows:

Whoever violates division (B) of this section is guilty of illegal release of confidential concealed handgun license records, a felony of the fifth degree. In addition to any penalties imposed under Chapter 2929. of the Revised Code for a violation of division (B) of this section or a violation of section 2913.04 of the Revised Code described in division (D) of this section, if the offender is a sheriff, an employee of a sheriff, or any other public officer or employee, and if the violation was willful and deliberate, the offender shall be subject to a civil fine of one thousand dollars. Any person who is harmed by a violation of division (B) or (C) of this section or a violation of section 2913.04 of the Revised Code described in division (D) of this section has a private cause of action against the offender for any injury, death, or loss to person or property that is a proximate result of the violation and may recover court costs and attorney’s fees related to the action.

We also note that the General Assembly has expressly authorized certain limited uses of licensee information by specific categories of persons. For example, R.C. 311.41(A)(1) authorizes a sheriff, in certain instances, to submit to the Superintendent of the Bureau of Criminal Identification and Investigation an applicant's fingerprints and social security number in order for the Bureau to conduct the criminal records check and the incompetency records check of the applicant. Another example is found in R.C. 2923.125(D) and (H) and R.C. 2923.1213(B)(2) and (D), which require a sheriff to make certain information concerning licensees and temporary emergency licensees available through the law enforcement automated data system. Although R.C. 2923.129(D) makes the information mentioned in R.C. 2923.125(D) and (H) and R.C. 2923.1213(B)(2) and (D) confidential and not a public record, it also permits law enforcement personnel to use such information "for law enforcement purposes only." It is apparent, therefore, that the prohibition in R.C. 2923.129(B)(1) against the release or other dissemination of licensee information does not include uses of such information expressly authorized or required by statute. Accordingly, the prohibition in R.C. 2923.129(B)(1) against the release or other dissemination of the information described therein prohibits anyone, subject to the exceptions in R.C. 2923.129(B)(2), from revealing, disclosing, or otherwise making known any of the information made confidential by that statute, "unless required to do so pursuant to a court order," or unless expressly authorized or required by statute.

Part of your third question asks whether a newspaper's publication or broadcast of the information that is made confidential by R.C. 2923.129(B)(1) constitutes the release or other dissemination of such information within the meaning of the prohibition contained in that statute. We note first that the General Assembly's grant of confidential status to the information described in R.C. 2923.129(B)(1) is subject to the exception in R.C. 2923.129(B)(2), which authorizes journalists to view, but not copy, a portion of the information described in R.C. 2923.129(B)(1), *i.e.*, the names, counties of residence, and dates of birth of those persons described in R.C. 2923.129(B)(2)(a).

As used in R.C. 2923.129(B)(2), the General Assembly has defined the term "journalist," in part, in terms of the activities in which a journalist typically engages, *i.e.*, "gathering, processing, transmitting, compiling, editing, or *disseminating information for the general public.*" R.C. 2923.129(B)(2)(b) (emphasis added). *See generally* note 5, *supra*. The General Assembly has also required a journalist who wishes to view the information described in R.C. 2923.129(B) to submit a signed, written request that includes, among other things, a statement "that disclosure of the information sought would be in the public interest." These portions of R.C. 2923.129(B)(2) suggest that the General Assembly was aware that the information a journalist is thereby permitted to view may well be used by the journalist for the purposes described in R.C. 2923.129(B)(2)(b), including the dissemination of that information for the general public.<sup>9</sup> *See generally, e.g., Grosjean v. American Press Co., Inc.*, 297 U.S. 233, 250

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<sup>9</sup> Given the prohibition in R.C. 2923.129(B)(2) against a journalist's copying any of the information he views under that statute, it is not clear how, as a practical matter, a journalist

(1936) (characterizing the press as “a vital source of public information”). Thus, we conclude that R.C. 2923.129(B)(1) does not prohibit a newspaper from publishing information that a journalist has viewed in accordance with R.C. 2923.129(B)(2).

### **Conclusions**

Based upon the foregoing, it is my opinion, and you are hereby advised that:

1. R.C. 2923.129(B)(2)(a) prohibits a journalist from making a reproduction by any means, other than through his own mental processes, of the information the journalist is permitted to view under that statute.
2. A sheriff may exercise his discretion in determining a reasonable manner by which a journalist may view, but not copy, the information described in R.C. 2923.129(B)(2)(a), so long as the sheriff maintains the confidentiality of the other information “relative to the issuance, renewal, suspension, or revocation of a license to carry a concealed handgun or the issuance, suspension, or revocation of a temporary emergency license to carry a concealed handgun,” R.C. 2923.129(B)(1).
3. The prohibition in R.C. 2923.129(B)(1) against the release or other dissemination of the information described therein prohibits anyone, subject to the exception in R.C. 2923.129(B)(2), from revealing, disclosing, or otherwise making known any of the information made confidential by that statute “unless required to do so pursuant to a court order,” or unless a statute specifically authorizes or requires other uses of such information.
4. R.C. 2923.129(B)(1) does not prohibit a newspaper from publishing information that a journalist has viewed in accordance with R.C. 2923.129(B)(2).

Respectfully,



MARC DANN  
Attorney General

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would be able to publish or disseminate more than a limited amount of the information available for viewing under that statute.