

February 27, 2019

The Honorable Dennis P. Will  
Lorain County Prosecuting Attorney  
225 Court Street, 3rd Floor  
Elyria, Ohio 44035

SYLLABUS:

2019-008

1. When a juvenile court orders the records of a delinquency adjudication sealed pursuant to R.C. 2151.356(C), and orders a public office or agency to expunge records of the case pursuant to R.C. 2151.357(A)(4), a public children services agency, upon delivering original records to the court as set forth in R.C. 2151.357(A)(3), is required to destroy, delete, and erase, so as to make permanently irretrievable, any copies of documents that were filed in the clerk of court's office under the juvenile court delinquency case number or were otherwise made part of the court's record in that case.
2. Once a public children services agency has expunged records of a delinquency case pursuant to R.C. 2151.357(A)(4), the agency is not required to destroy, delete, and erase any references to the acts of the child that resulted in the child being adjudicated delinquent that appear in the agency's remaining records.
3. After a public children services agency has expunged records of a child's delinquency adjudication pursuant to R.C. 2151.357(A)(4), the agency remains responsible for disclosing to the child's prospective foster or adoptive parents any information contained in the agency's remaining records that relates to the acts of the child that resulted in the adjudication of delinquency, if the information is required to be disclosed pursuant to 13 Ohio Admin. Code 5101:2-48-15 (2016-2017 Supplement) or 13 Ohio Admin. Code 5101:2-42-90 (2016-2017 Supplement).



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OPINION NO. 2019-008

The Honorable Dennis P. Will  
Lorain County Prosecuting Attorney  
225 Court Street, 3rd Floor  
Elyria, Ohio 44035

Dear Prosecutor Will:

We have received your request regarding the responsibility of a county public children services agency (“PCSA”)<sup>1</sup> to disclose certain types of information to prospective foster or adoptive parents. Lorain County Children Services seeks to place a child of whom the agency has permanent custody with foster or adoptive parents. In 2017, the child was adjudicated a delinquent child for the commission of a domestic violence offense. *See* R.C. 2152.02(E) (defining “delinquent child”); *see also* R.C. 2151.011(B)(12) (as used in R.C. Chapter 2151, “[d]elinquent child’ has the same meaning as in [R.C. 2152.02]”). The child later pleaded to disorderly conduct-persisting in violation of R.C. 2917.11(A)(1), a misdemeanor of the fourth degree under R.C. 2917.11(E)(3)(a). The records pertaining to these delinquency adjudications have been sealed by the Juvenile Division of the Lorain County Court of Common Pleas pursuant to R.C. 2151.356(C).<sup>2</sup>

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<sup>1</sup> Each county in the state of Ohio is required to have a public children services agency (“PCSA”) that “assume[s] the powers and duties of the children services function ... for a county.” R.C. 5153.01(A); *see also* R.C. 5153.02. A PCSA may be a county children services board, a county department of job and family services, or an entity designated under R.C. 307.981. R.C. 5153.02(A)-(C).

<sup>2</sup> The court’s judgment entry, in addition to ordering the records of the delinquency proceedings sealed pursuant to R.C. 2151.356(C), ordered the records to be expunged pursuant to R.C. 2151.358, “at the appropriate statutory time.” R.C. 2151.358(A) requires a juvenile court to “expunge all records sealed under [R.C. 2151.356] five years after the court issues a sealing order or upon the twenty-third birthday of the person who is the subject of the sealing order, whichever date is earlier.” R.C. 2151.358(B) authorizes a person whose records have been sealed pursuant to R.C. 2151.356 to file an application to have the records expunged earlier than

When a juvenile court orders records sealed pursuant to R.C. 2151.356(C), a PCSA is required “to expunge records of the case that are the subject of the sealing order that are maintained by” the PCSA. R.C. 2151.357(A)(4). Under 13 Ohio Admin. Code 5101:2-42-90 (2016-2017 Supplement) and 13 Ohio Admin. Code 5101:2-48-15 (2016-2017 Supplement), a PCSA is required to disclose information about a child to prospective foster or adoptive parents, including information related to acts of the child that resulted in the child being adjudicated delinquent. You ask us to reconcile the responsibility of a PCSA to expunge records as set forth in R.C. 2151.357(A)(4) with the responsibility of a PCSA to disclose information related to a child’s adjudication of delinquency under rules 5101:2-42-90 and 5101:2-48-15. For ease of organization and analysis, we have renumbered and rephrased your questions as follows:

1. Upon receiving notice that records of a delinquency proceeding in which a child was adjudicated delinquent have been sealed pursuant to R.C. 2151.356(C), is a PCSA required to delete from its records all information referencing the acts of the child that resulted in the adjudication of delinquency?
2. Is a PCSA authorized or required to disclose to the child’s prospective foster or adoptive parents information related to the acts of the child that resulted in the child being adjudicated delinquent, the records of which have been sealed pursuant to R.C. 2151.356(C)?<sup>3</sup>

### **The Responsibility of a PCSA to Destroy Sealed Juvenile Records**

Your first question asks whether a PCSA, upon receiving notice that records of a child’s delinquency proceedings have been sealed pursuant to R.C. 2151.356(C), is required to delete from its records all information related to the acts of the child that resulted in the child being adjudicated delinquent. We understand your use of the term “information” to mean all references to the delinquency adjudication or the acts leading to the delinquency adjudication that appear in a record kept by a PCSA.

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as provided in R.C. 2151.358(A). We understand that, in this instance, the child whose records have been sealed pursuant to R.C. 2151.356(C) has not filed an application pursuant to R.C. 2151.358(B).

<sup>3</sup> In this instance, the PCSA has permanent custody of the child whose records have been sealed pursuant to R.C. 2151.356(C). You ask whether the answers to your questions would change if the PCSA did not have permanent custody of the child. Whether a PCSA has permanent custody of a child has no bearing on its responsibility to expunge records as set forth in R.C. 2151.357(A)(4) or on its duty to comply with 13 Ohio Admin. Code 5101:2-42-90 (2016-2017 Supplement) and 13 Ohio Admin. Code 5101:2-48-15 (2016-2017 Supplement). Accordingly, whether a PCSA has permanent custody of a child whose records have been sealed by a juvenile court pursuant to R.C. 2151.356(C) does not affect the conclusions reached in this opinion.

A PCSA is required to create and maintain a variety of records in the course of providing services to, and for the benefit of, children. *See, e.g.*, R.C. 5153.17 (a PCSA shall maintain records of investigations and “prepare and keep such other records as are required by” the Ohio Department of Job and Family Services (“ODJFS”)); R.C. 2151.412(A)(2) (a PCSA shall prepare and maintain a case plan for any child of which it has custody); 13 Ohio Admin. Code 5101:2-48-21(A) (2016-2017 Supplement) (a PCSA is required to develop a child study inventory (“CSI”) within thirty days after receiving permanent custody of a child); 13 Ohio Admin. Code 5101:2-48-22(A) (2016-2017 Supplement) (a PCSA “shall prepare and maintain adoptive family case records at the time that an JFS 01691, ‘[ODJFS] Application for Child Placement’ ... is received”); 13 Ohio Admin. Code 5101:2-48-23(A) (2016-2017 Supplement) (a PCSA “which has placed a child for adoption and for whom the adoption has been finalized, shall permanently maintain an adoptive child case record”). Records created and maintained by a PCSA may contain information that describes the acts of a child that resulted in an adjudication of delinquency or may note the fact that the child was adjudicated delinquent for the commission of those acts. *See, e.g.*, rule 5101:2-48-21(C)(5)(f), (g) (requiring a PCSA to include information related to a child’s delinquency adjudications in the child’s CSI); 13 Ohio Admin. Code 5101:2-42-67(A) (2016-2017 Supplement); rule 5101:2-48-22(B)(9) (“[e]ach adoptive family case record ... shall contain ... [a] signed copy of the child study inventory”); rule 5101:2-48-23(B)(6) (“[a]n adoptive child case record shall contain all papers and records pertaining to the adoption, including ... [a] copy of the child’s lifebook”). You ask us to determine exactly what information in a PCSA’s records is required to be purged when a juvenile court seals records pursuant to R.C. 2151.356(C).

R.C. 2151.356(C)(1) requires a juvenile court to consider sealing records pertaining to a juvenile upon the court’s own motion “or upon the application of a person if the person has been adjudicated a delinquent child for committing an act other than a violation of [R.C. 2903.01, R.C. 2903.02, or R.C. 2907.02],” has been adjudicated “an unruly child,” or has been adjudicated “a juvenile traffic offender.”<sup>4</sup> A juvenile court may not consider sealing records pertaining to a juvenile if the person whose records are to be sealed is the subject of a delinquency proceeding pending before the juvenile court. R.C. 2151.356(C)(1). A juvenile court considering whether to seal records pursuant to R.C. 2151.356(C)(1) may order the records sealed if the court “finds that the person has been rehabilitated to a satisfactory degree.” R.C. 2151.356(C)(2)(e).

If a juvenile court orders records sealed pursuant to R.C. 2151.356(C), “the person who is subject of the order properly may, and the court shall, reply that no record exists with respect to the person upon any inquiry in the matter.” R.C. 2151.357(A). Upon ordering the records sealed, the juvenile court also is required to “[o]rder that the proceedings in a case described in

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<sup>4</sup> R.C. 2151.356(B) specifies circumstances in which a juvenile court is required to seal “records pertaining to a juvenile.” In the circumstances you present, the child’s records were sealed by the juvenile court pursuant to R.C. 2151.356(C). Accordingly, for the purpose of this opinion, we shall confine our consideration of your questions to instances in which a juvenile court has sealed records as set forth in R.C. 2151.356(C).

... [R.C. 2151.356(C)] be deemed never to have occurred,” R.C. 2151.357(A)(1), and to “[o]rder that all original records of the case maintained by any public office or agency,” except certain fingerprints and DNA records,<sup>5</sup> “be delivered to the court.” R.C. 2151.357(A)(3). The juvenile court is required to “[s]eal all of the records delivered to the court under [R.C. 2151.357(A)(3)], in a separate file in which only sealed records are maintained.” R.C. 2151.357(A)(6); *see also* R.C. 2151.355(B) (as used in R.C. 2151.356 to R.C. 2151.358, to “[s]eal a record’ means to remove a record from the main file of similar records and to secure it in a separate file that contains only sealed records accessible only to the juvenile court”).

In addition to delivering original records of the case to the juvenile court as set forth in R.C. 2151.357(A)(3), a public office or agency is required, by order of the court as set forth in R.C. 2151.357(A)(4), “to expunge remaining records of the case that are the subject of the sealing order.” A PCSA is undoubtedly a “public office or agency,” as that phrase is used in R.C. 2151.357.<sup>6</sup> *See Wiley v. Summit Cnty. Children Servs.*, Summit App. No. 23372, 2007-Ohio-1476, at ¶8 (finding that a PCSA is a “public office” within the meaning of R.C. 149.43). Therefore, you ask us to determine the scope of a PCSA’s responsibility to expunge records under R.C. 2151.357(A)(4).

R.C. 2151.355(A) defines “expunge,” as used in R.C. 2151.356 to R.C. 2151.358, to mean “to destroy, delete, and erase a record, as appropriate for the record’s physical or electronic form or characteristic, so that the record is permanently irretrievable.” Accordingly, when a juvenile court orders the records of a juvenile to be sealed pursuant to R.C. 2151.356(C), a PCSA is responsible, upon delivering original records of the case to the court as set forth in R.C. 2151.357(A)(3), for destroying, deleting, and erasing any remaining records of the case that are the subject of the sealing order that are maintained by the PCSA, so that the records are permanently irretrievable. The phrase, “records of the case,” is not defined by statute. Therefore, we construe the meaning of the phrase “in context and ... according to the rules of grammar and common usage.” R.C. 1.42.

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<sup>5</sup> Pursuant to order of a juvenile court as set forth in R.C. 2151.357(A)(3), a public office or agency shall deliver to the court “all original records of the case maintained by any public office or agency, except fingerprints held by a law enforcement agency, DNA specimens collected pursuant to [R.C. 2152.74], and DNA records derived from DNA specimens pursuant to [R.C. 109.573].”

<sup>6</sup> The General Assembly has conferred upon a PCSA numerous, varied duties and responsibilities related to the provision of public or protective services for children, including the responsibility to investigate child abuse allegations, R.C. 5153.16(A)(1), accept custody of children committed to the PCSA by a court exercising juvenile jurisdiction, R.C. 5153.16(A)(3), and the authority to place a child in a certified foster home or with adoptive parents. R.C. 5153.16(C)(1); R.C. 3107.011(A); 13 Ohio Admin. Code 5101:2-42-05(C), (G) (2016-2017 Supplement).

The word “case” generally means, as applicable in this context, “a matter or issue decided by a judge or in a court of law.” *Webster’s New World College Dictionary* 231 (5th ed. 2014). The matters or issues for which a juvenile court may seal records pursuant to R.C. 2151.356(C) include any matter or issue in which a “person has been adjudicated a delinquent child for committing an act other than a violation of [R.C. 2903.01, R.C. 2903.02, or R.C. 2907.02], an unruly child, or a juvenile traffic offender.” In this instance, the juvenile court has sealed records of two proceedings in which a child was adjudicated a delinquent child. Accordingly, the meaning of the phrase, “the case,” in this instance, means the juvenile court proceeding in which a person was adjudicated a delinquent child, the records of which the juvenile court has ordered sealed pursuant to R.C. 2151.356(C).

The word “records” is not defined for the purpose of R.C. 2151.357 or more generally for the purpose of R.C. Chapter 2151. *Webster’s New World College Dictionary* 1214 defines “record” broadly to mean “anything that is written down and preserved as evidence” or an “account of events.” In this context, the term “records” is modified by the phrase, “of the case.” The preposition “of” is used in R.C. 2151.357 to refer to those records that “belong to” the juvenile court proceeding in which a person has been adjudicated a delinquent child, the records of which the juvenile court has ordered sealed pursuant to R.C. 2151.356(C). *See Webster’s New World College Dictionary* 1014 (defining “of” to mean, among other things, “belonging to [the pages of a book, the square root of 3, that dog of his]”). Records that “belong” to a juvenile court proceeding are documents that were filed in the clerk of court’s office under the juvenile court delinquency case number. This includes documents produced by the court in that proceeding such as orders, judgment entries, and official transcripts and exhibits, as well as any documents generated by the parties that were filed with the court during that proceeding. Thus, when a juvenile court orders records of a child’s delinquency proceedings sealed pursuant to R.C. 2151.356(C), upon delivering original records of the case to the court as set forth in R.C. 2151.357(A)(3), a PCSA is required, as set forth in R.C. 2151.357(A)(4), to destroy, delete, and erase, so as to make permanently irretrievable, any copies that the PCSA has of the documents filed with the court for that juvenile delinquency proceeding. A PCSA is not required to delete information about the delinquency that appears in any other document the PCSA maintains.

Accordingly, in response to your first question, we conclude that when a juvenile court orders the sealing of records pursuant to R.C. 2151.356(C), and orders a public office or agency to expunge records of the case pursuant to R.C. 2151.357(A)(4), a PCSA, upon delivering original records to the court as set forth in R.C. 2151.357(A)(3), is required to destroy, delete, and erase, so as to make permanently irretrievable, any copies of documents that were filed in the clerk of court’s office under the juvenile court delinquency case number or were otherwise made part of the court’s record in that case. A PCSA is not required to destroy, delete, and erase all references to the acts of the child that resulted in the child being adjudicated delinquent that are in the PCSA’s remaining records.

**The Duty of a PCSA to Disclose Information to Prospective Foster or Adoptive Parents Once Juvenile Records Have Been Sealed Pursuant to R.C. 2151.356(C)**

Your second question asks whether a PCSA is authorized or required to disclose to a child's prospective foster or adoptive parents information related to the acts of a child that resulted in the child being adjudicated delinquent, the records of which have been sealed pursuant to R.C. 2151.356(C) and expunged pursuant to R.C. 2151.357(A)(4).

Rules 5101:2-42-90 and 5101:2-48-15 require a PCSA to disclose to prospective foster or adoptive parents a variety of information that relates to violent acts committed by a child, including information regarding acts that resulted in the child being adjudicated delinquent. *See, e.g.*, rule 5101:2-42-90(C)(4) (a PCSA is required to disclose to prospective foster parents “[i]nformation on any acts committed by the child that placed the health, safety, or well-being of others at risk”); rule 5101:2-42-90(C)(8)(a)-(1), (9) (requiring a PCSA to disclose to prospective foster parents “[a] written report containing” information about “a child who has been adjudicated delinquent for commission” of a variety of violent offenses, including assault, rape, and manslaughter); rule 5101:2-42-90(G)(2) (a PCSA is required to disclose to prospective foster parents “[a] brief description of the reasons the child was removed from his home”); rule 5101:2-48-15(B) (a PCSA is required to provide to the prospective adoptive parents the child's CSI); rule 5101:2-48-15(D)(1)-(13) (a PCSA shall disclose to prospective adoptive parents “a written report” including information about a child who “has been adjudicated a delinquent for an act to which” various offenses apply, including, but not limited to, assault, murder, and sexual battery).

These administrative rules require a PCSA to disclose information to prospective foster or adoptive parents to ensure that the prospective foster or adoptive parents are able and willing to provide for the child. *See* rule 5101:2-48-15(A) (requiring a PCSA to provide prospective adoptive parents a variety of information and materials pursuant to “to assist the prospective adoptive parent(s) in making an informed decision about the placement”). When records pertaining to a child's delinquency proceeding are sealed pursuant to R.C. 2151.356(C), a PCSA is required to delete, destroy, and erase its copies of any documents that were filed in the clerk of court's office under the juvenile court delinquency case number. Significantly, when a juvenile court seals records pursuant to R.C. 2151.356(C), a PCSA is not required to delete, destroy, or erase any of its records that include information about a child's behavioral history and prior adjudications of delinquency, if those records are not “records of the case,” within the meaning of R.C. 2151.357(A)(4).

R.C. 2151.355 to R.C. 2151.358 provide for the sealing and expungement of juvenile court records to prevent mistakes made during a person's childhood from hindering the person for the rest of her life, most particularly in seeking gainful employment. *See In re T.R.*, 52 Ohio St. 3d 6, 25, 556 N.E.2d 439 (1990) (recognizing that the purpose of sealing juvenile court records is to shield “youthful errors from the full gaze of the public and bury them in the graveyard of the forgotten past” (internal citations and quotations omitted)). R.C. 2151.357(F) furthers this purpose by prohibiting an “officer or employee of the state or any of its political subdivisions” from disseminating “for any purpose involving employment, bonding, licensing, or

education ... any information or other data concerning any arrest, taking into custody, complaint, indictment, information, trial, hearing, adjudication, or correctional supervision, the records of which have been sealed pursuant to [R.C. 2151.356].” No provision in R.C. 2151.355 to R.C. 2151.358 prohibits a PCSA from disclosing information to prospective foster or adoptive parents under rules 5101:2-48-15 or 5101:2-42-90 about a child whose juvenile records have been sealed pursuant to R.C. 2151.356(C). The ability of a PCSA to disclose information about the behavioral tendencies and temperament of a child to prospective foster or adoptive parents is critical for ensuring the child is placed in the appropriate care setting. Therefore, if a PCSA seeks to place a child with foster or adoptive parents, the PCSA is obligated to disclose to the prospective parents the information required by rules 5101:2-48-15 or 5101:2-42-90, regardless of whether the child’s juvenile court records have been sealed pursuant to R.C. 2151.356(C) and expunged pursuant to R.C. 2151.357(A)(4).<sup>7</sup>

Accordingly, in response to your second question, we conclude that after a PCSA has expunged records of a child’s delinquency adjudication pursuant to R.C. 2151.357(A)(4), the PCSA remains responsible for disclosing to the child’s prospective foster or adoptive parents any information in the PCSA’s remaining records that relates to the acts of the child that resulted in the adjudication of delinquency, if the information is required to be disclosed pursuant to rule 5101:2-48-15 or rule 5101:2-42-90.

### **Conclusions**

In sum, it is our opinion, and you are hereby advised that:

1. When a juvenile court orders the records of a delinquency adjudication sealed pursuant to R.C. 2151.356(C), and orders a public office or agency to expunge records of the case pursuant to R.C. 2151.357(A)(4), a public children services agency, upon delivering original records to the court as set forth in R.C. 2151.357(A)(3), is required to destroy, delete, and erase, so as to make permanently irretrievable, any copies of documents that were filed in the clerk of court’s office under the juvenile court delinquency case number or were otherwise made part of the court’s record in that case.
2. Once a public children services agency has expunged records of a delinquency case pursuant to R.C. 2151.357(A)(4), the agency is not required to destroy, delete, and erase any references to the acts of the child that resulted in the child being adjudicated delinquent that appear in the agency’s remaining records.

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<sup>7</sup> An employee of a PCSA that fails to provide prospective adoptive parents the written report required by divisions (D) and (E) of rule 5101:2-48-15 may be charged with a minor misdemeanor. Rule 5101:2-48-15(H).



3. After a public children services agency has expunged records of a child's delinquency adjudication pursuant to R.C. 2151.357(A)(4), the agency remains responsible for disclosing to the child's prospective foster or adoptive parents any information contained in the agency's remaining records that relates to the acts of the child that resulted in the adjudication of delinquency, if the information is required to be disclosed pursuant to 13 Ohio Admin. Code 5101:2-48-15 (2016-2017 Supplement) or 13 Ohio Admin. Code 5101:2-42-90 (2016-2017 Supplement).

Respectfully,

A handwritten signature in blue ink that reads "Dave Yost". The signature is written in a cursive, flowing style.

DAVE YOST  
Ohio Attorney General