

May 15, 2014

The Honorable William T. Goslee  
Logan County Prosecuting Attorney  
117 East Columbus Avenue, Suite 200  
Bellefontaine, Ohio 43311-2053

SYLLABUS:

2014-021

1. A county department of job and family services' authority to release information about a recipient of Ohio Works First (OWF), Disability Financial Assistance (DFA), or Supplemental Nutrition Assistance Program (SNAP) benefits to a law enforcement agency is controlled by R.C. 5101.27-.30, R.C. 5101.54, 12 Ohio Admin. Code 5101:1-1-03, 14B Ohio Admin Code 5101:4-1-13, and federal law.
2. A county department of job and family services' authority to release the names and address of an OWF, DFA, or SNAP recipient's household members is controlled by the same statutes and rules that control the department's authority to release information about the recipient of OWF, DFA, or SNAP benefits.
3. Information about a recipient of OWF, DFA, or SNAP benefits may be disclosed in response to a subpoena issued pursuant to Ohio R. Civ. P. 45 or Ohio R. Crim. P. 17 depending upon the facts and circumstances of each case. When a county department of job and family services files a motion to quash a law enforcement agency's subpoena seeking information about a recipient of OWF, DFA, or SNAP benefits, whether the county agency is required to release the information must be determined by a court of competent jurisdiction on a case-by-case basis.



# MIKE DEWINE

★ OHIO ATTORNEY GENERAL ★

Opinions Section  
Office 614-752-6417  
Fax 614-466-0013

30 East Broad Street, 15<sup>th</sup> Floor  
Columbus, Ohio 43215  
[www.OhioAttorneyGeneral.gov](http://www.OhioAttorneyGeneral.gov)

May 15, 2014

OPINION NO. 2014-021

The Honorable William T. Goslee  
Logan County Prosecuting Attorney  
117 East Columbus Avenue, Suite 200  
Bellefontaine, Ohio 43311-2053

Dear Prosecutor Goslee:

You have requested an opinion regarding a county department of job and family services' (CDJFS) authority to release information about a public assistance recipient to a law enforcement agency. You wish to know whether a CDJFS may furnish the names and address of a public assistance benefit recipient, or a recipient's household members, to a law enforcement agency.<sup>1</sup> In addition, you ask whether a CDJFS is immune from the powers of a subpoena.

As an illustration of the issues involved, your request letter describes three examples of instances in which a law enforcement agency requested a public assistance recipient's identifying information from a CDJFS, but was unable to obtain the information. In your first example, a county

---

<sup>1</sup> In a telephone conversation, you clarified that you are concerned with public assistance benefits that are paid to a recipient through an electronic benefit transfer (EBT) card. The following benefits may be paid or delivered to a recipient through EBT:

- (1) Cash assistance paid under [R.C. Chapter 5107 or 5115];
- (2) Supplemental nutrition assistance program benefits provided under [R.C. 5101.54];
- (3) Any other program administered by the [Ohio] department of job and family services under which assistance is provided or service rendered;
- (4) Any other program, service, or assistance administered by a person or government entity that the department determines may be delivered through the medium of electronic benefit transfer.

R.C. 5101.33(A), (B). Based upon our conversation, we have limited our consideration of information about a public assistance recipient to information about a recipient of benefits that are paid under R.C. Chapter 5107 (Ohio Works First program (OWF)); R.C. Chapter 5115 (Disability Financial Assistance program (DFA)), and R.C. 5101.54 (Supplemental Nutrition Assistance program (SNAP)).

prosecuting attorney issued a subpoena to a CDJFS requesting the address of a material witness that was believed to be receiving public assistance. The county prosecuting attorney sought the recipient's address in order to provide the witness with notice of a trial date. The director of the CDJFS responded that the information could not be released.

The second instance involved a police investigation of damage sustained by a police cruiser that was parked in the parking lot of a local grocery store. The numbers of EBT cards that were used to make purchases at the grocery store during the period of time in which the cruiser was damaged were obtained from the store. A subpoena was then issued to the CDJFS requesting the names and addresses of individuals associated with the EBT card numbers. The CDJFS refused to provide the information.

The third example involved the investigation of a theft of a wallet in a store. A woman was seen on the store's surveillance camera taking a wallet that was left by a previous customer. The woman subsequently made a purchase at the store using her own EBT card. In an effort to identify the woman, the local law enforcement agency attempted to obtain her identity from the CDJFS based on her EBT card transaction. The request for information was denied.

#### **Ohio Works First, Disability Financial Assistance, and Supplemental Nutrition Assistance Program Generally**

Ohio Works First (OWF) is a federally-funded program that provides time-limited financial assistance to eligible individuals. R.C. 5107.02(I); R.C. 5107.10(B). The program is administered by the Ohio Department of Job and Family Services (ODJFS), in accordance with federal and state law. R.C. 5107.03. Disability financial assistance (DFA) is "a state and county-funded program which provides cash assistance to persons who meet DFA program requirements and who are ineligible for public assistance programs that are supported in whole or in part by federal funds," such as OWF or Supplemental Security Income. 12 Ohio Admin. Code 5101:1-5-01(A)(1). Eligibility for DFA is determined by a person's age or inability to "do any substantial or gainful activity by reason of a medically determinable physical or mental impairment that can be expected to result in death or has lasted or can be expected to last for not less than nine months." R.C. 5115.01(B). Administration of the DFA program is governed entirely by state law and is established and administered by the Director of Job and Family Services. R.C. 5115.04(A); rule 5101:1-5-01(A)(1). As required or assigned by ODJFS, a CDJFS shall administer and perform any services provided under the OWF and DFA programs. R.C. 329.04(A); R.C. 5101.80(A)(4).

The Supplemental Nutrition Assistance Program (SNAP) is a federally-funded program that provides financial assistance to eligible individuals for the purchase of food. 7 U.S.C.A. § 2013; R.C. 5101.541. A SNAP recipient's benefit is provided on an EBT card. R.C. 5101.542. The program is administered by the Director of Job and Family Services "in accordance with the Food and Nutrition Act of 2008 [7 U.S.C. §§ 2011, *et seq.*]" R.C. 5101.54(A). The distribution of SNAP benefits is administered by a CDJFS. R.C. 329.042.

**Authority to Release Information about a Recipient of Ohio Works First, Disability Financial Assistance, and Supplemental Nutrition Assistance Program Benefits**

“[N]o person or government entity shall solicit, disclose, receive, use, or knowingly permit, or participate in the use of any information<sup>2</sup> regarding a public assistance<sup>3</sup> recipient<sup>4</sup> for any purpose not directly connected with the administration of a public assistance program[,]” unless the release of the information is permitted by R.C. 5101.27, R.C. 5101.273, R.C. 5101.28, R.C. 5101.29, administrative rule adopted under R.C. 5101.30, or federal law. R.C. 5101.27(A) (footnotes added); 14B Ohio Admin. Code 5101:9-9-21(H)(3) (“[a]ll information and records concerning an applicant, a recipient, or a former recipient must be safe guarded from release as specified by applicable state and federal

---

<sup>2</sup> As used in R.C. 5101.27-.30, “information” “means records as defined in [R.C. 149.011], any other documents in any format, and data derived from records and documents that are generated, acquired, or maintained by the department of job and family services, a county agency, or an entity performing duties on behalf of the department or a county agency.” R.C. 5101.26(C). The name and address of a public assistance recipient are data that are derived from records or documents acquired and maintained by a CDJFS. *See* 12 Ohio Admin. Code 5101:1-3-03(A)(1) (residence in the state of Ohio is a requirement for eligibility for OWF); 12 Ohio Admin. Code 5101:1-3-07 (a potential OWF assistance group member must verify his identity before he may be eligible for inclusion in an assistance group); 12 Ohio Admin. Code 5101:1-5-10(A) (a DFA recipient must be physically present in Ohio and must apply for and receive DFA from the county in which he resides); 14B Ohio Admin. Code 5101:4-3-03(A) (a SNAP assistance group must apply for SNAP benefits in the county in which the members live); rule 5101:4-3-03(C) (the application for SNAP benefits asks for a physical address and mailing address); Ohio Department of Job and Family Services Form 07200 (application form for cash, food, and medical assistance requests name and address). Accordingly, the name and address of recipients of OWF, DFA, or SNAP benefits constitute “information” as that term is defined in R.C. 5101.26(C).

A county department of job and family services (CDJFS) is a “county agency” as that term is used in R.C. 5101.27-.30. R.C. 5101.26(A).

<sup>3</sup> For the purposes of R.C. 5101.27-.30, “public assistance” is defined as “financial assistance or social services that are provided under a program administered by the department of job and family services or a county agency pursuant to [R.C. Chapters 329, 5101, 5104, 5107, 5108, or 5115] or an executive order issued under [R.C. 107.17].” R.C. 5101.26(E). The term “public assistance” does not include “medical assistance provided under a medical assistance program, as defined in [R.C. 5160.01].” R.C. 5101.26(E). Therefore, OWF, DFA, and SNAP benefits are public assistance for purposes of R.C. 5101.27.

<sup>4</sup> As used in R.C. 5101.27-.30, a “public assistance recipient” is “an applicant for or recipient or former recipient of public assistance.” R.C. 5101.26(F).

law and regulations”). A person or entity who “violates [R.C. 5101.27(A)] is guilty of a misdemeanor of the first degree.” R.C. 5101.99(B); 2005 Op. Att’y Gen. No. 2005-025, at 2-268 (“personnel of ODJFS and county departments of job and family services may be subject to criminal prosecution if they improperly disseminate information regarding a public assistance recipient”).

R.C. 5101.27 establishes a broad prohibition concerning the release of information about a public assistance recipient. However, there are some exceptions to the prohibition that are set forth in R.C. 5101.27, R.C. 5101.273, R.C. 5101.28, R.C. 5101.29, administrative rule adopted under R.C. 5101.30, and federal law. For purposes of this opinion, therefore, we must determine whether the release of a recipient’s name and address and the name and address of a recipient’s household member to a law enforcement agency<sup>5</sup> is permitted by R.C. 5101.27, 5101.28, or an administrative rule adopted under R.C. 5101.30.<sup>6</sup>

---

<sup>5</sup> For the purposes of R.C. 5101.27-.30, “law enforcement agency” includes the following agencies: “the state highway patrol, an agency that employs peace officers as defined in [R.C. 109.71], the adult parole authority, a county department of probation, a prosecuting attorney, the attorney general, similar agencies of other states, federal law enforcement agencies, and postal inspectors.” R.C. 5101.26(D).

A law enforcement agency could request information from a CDJFS through R.C. 149.43, Ohio’s public records law. 1994 Op. Att’y Gen. No. 94-084, at 2-414 to 2-415 n.3. However, R.C. 149.43(A)(1)(v) excludes from the definition of public record, “[r]ecords the release of which is prohibited by state or federal law.” 1994 Op. Att’y Gen. No. 94-084, at 2-414 to 2-415 n.3. Thus, a law enforcement agency’s access to information about a public assistance recipient that is found within the records of a CDJFS is limited by the statutes controlling the release of such information, rather than exclusively by R.C. 149.43. 1994 Op. Att’y Gen. No. 94-084, at 2-414 to 2-415 n.3.

<sup>6</sup> R.C. 5101.273 requires the Ohio Department of Job and Family Services (ODJFS) to participate in the public assistance reporting information system and permits disclosure of information about a recipient for the purpose of participating in the system. R.C. 5101.29 addresses the status of certain day-care center records and foster caregiver records as public records. In so far as R.C. 5101.273 and R.C. 5101.29 are not relevant to the determination of whether the name and address of a public assistance benefit recipient or a recipient’s household member may be released by a CDJFS to a law enforcement agency, we will not discuss them.

In addition, “[i]t is beyond the scope of the formal opinion process for the Attorney General to provide authoritative interpretations of federal law.” 2013 Op. Att’y Gen. No. 2013-017, at 2-171. Whether federal law permits a CDJFS to furnish the name and address of a public assistance benefit recipient or a recipient’s household member to a law enforcement agency must be addressed by local officials or the courts. *See* 2013 Op. Att’y Gen. No. 2013-043, slip op. at 3 n. 5 (“[t]hese federal laws, however, are outside the scope of this opinion and we have not determined whether these laws impose

Let us first consider R.C. 5101.27. Divisions (D) and (E) of R.C. 5101.27 provide that a CDJFS may release information about a public assistance recipient only in accordance with written authorization by a public assistance recipient that complies with R.C. 5101.272, unless information about a public assistance recipient is required to be released by R.C. 5101.27(B), (C), or (D)(2).<sup>7</sup> R.C. 5101.27(B) states:

---

any limitations on the application of R.C. 5815.33”); 2013 Op. Att’y Gen. No. 2013-039, slip op. at 2 n.7 (“[w]hether federal law prohibits a CDJFS from using federal money, or state or local money used to match a federal grant, to provide its employees retroactive lump sum pay increases is a matter that must be determined by local officials or the courts”); 2013 Op. Att’y Gen. No. 2013-017, at 2-171 (“[h]ow the [Fair Labor Standards Act] applies in particular instances will have to be addressed by local officials or the courts”). Thus, we will limit our consideration to the state laws and regulations identified in R.C. 5101.27(A), with the proviso that any release of information permitted by the Ohio Revised Code or the Ohio Administrative Code must also be consistent with federal law.

<sup>7</sup> Written authorization that complies with R.C. 5101.272 is authorization that is:

made on a form that uses language understandable to the average person and contains all of the following:

- (1) A description of the information to be used or disclosed that identifies the information in a specific and meaningful fashion;
- (2) The name or other specific identification of the person or class of persons authorized to make the requested use or disclosure;
- (3) The name or other specific identification of the person or governmental entity to which the information may be released;
- (4) A description of each purpose of the requested use or disclosure of the information;
- (5) The date on which the authorization expires or an event related either to the individual who is the subject of the request or to the purposes of the requested use or disclosure, the occurrence of which will cause the authorization to expire;
- (6) A statement that the information used or disclosed pursuant to the authorization may be disclosed by the recipient of the information and may no longer be protected from disclosure;
- (7) The signature of the individual or the individual’s authorized representative and the date on which the authorization was signed;
- (8) If signed by an authorized representative, a description of the representative’s authority to act for the individual;
- (9) A statement of the individual or authorized representative’s right to prospectively revoke the written authorization in writing, along with one of the following:

[t]o the extent permitted by federal law, [ODJFS and a CDJFS] shall do all of the following:

(1) Release information regarding a public assistance recipient for purposes directly connected to the administration of the program to a government entity responsible for administering that public assistance program;

(2) Provide information regarding a public assistance recipient to a law enforcement agency for the purpose of any investigation, prosecution, or criminal or civil proceeding relating to the administration of that public assistance program;

(3) Provide, for purposes directly connected to the administration of a program that assists needy individuals with the costs of public utility services, information regarding a recipient of financial assistance provided under a program administered by the department or a county agency pursuant to [R.C. Chapters 5107 or 5108] or [R.C. 5115.01-.07] to an entity administering the public utility services program.

This means that R.C. 5101.27(B) requires a CDJFS to release information about a public assistance recipient to a government entity that is responsible for administering a particular public assistance program so long as the information is used for purposes directly connected to the administration of the program. R.C. 5101.27(B)(1). In addition, R.C. 5101.27(B) requires a CDJFS to release information about a public assistance recipient to a law enforcement agency for the purpose of an investigation, prosecution, or civil or criminal proceeding that relates to the administration of that particular public assistance program. R.C. 5101.27(B)(2). Finally, R.C. 5101.27(B) requires a CDJFS to release information about a recipient of financial assistance under R.C. Chapter 5107 (OWF), R.C. Chapter 5108 (prevention, retention and contingency program), or R.C. 5115.01-.07 (DFA) to an entity that administers a public utility assistance program for purposes directly connected to that public utility assistance program. R.C. 5101.27(B)(3).

---

(a) A description of how the individual or authorized representative may revoke the authorization;

(b) If the department of job and family services' privacy notice contains a description of how the individual or authorized representative may revoke the authorization, a reference to that privacy notice.

(10) A statement that treatment, payment, enrollment, or eligibility for public assistance cannot be conditioned on signing the authorization unless the authorization is necessary for determining eligibility for the public assistance program.

R.C. 5101.272(A).

R.C. 5101.27(C) requires a CDJFS to release information about a public assistance recipient to the recipient, an authorized representative of the recipient,<sup>8</sup> the recipient's legal guardian, and the recipient's attorney if the recipient provides written authorization to the attorney that is consistent with R.C. 5101.272. Any release of information in accordance with R.C. 5101.27(C) must also be authorized by federal law and R.C. 1347.08.<sup>9</sup> R.C. 5101.27(C). R.C. 5101.27(D)(2) permits a CDJFS to "[r]elease information regarding a public assistance recipient to a state, federal, or federally assisted program that provides cash or in-kind assistance or services directly to individuals based on need or for the purpose of protecting children to a government entity responsible for administering a children's protective services program."

Applying the statutes discussed above to your inquiry, it is evident that information about a recipient of OWF, DFA, or SNAP benefits may be released to a law enforcement agency if a written authorization that complies with R.C. 5101.272 is completed. R.C. 5101.27(D)(1), (E). Additionally, information about a recipient of OWF, DFA, or SNAP benefits must be released to a law enforcement agency for the purpose of an investigation, prosecution, or civil or criminal proceeding that is related to the administration of the OWF, DFA, or SNAP programs. R.C. 5101.27(B)(2).

We must now determine whether R.C. 5101.28, a second exception to the broad prohibition set forth in R.C. 5101.27(A), permits a CDJFS to release information about a recipient of OWF, DFA, or SNAP benefits to a law enforcement agency. R.C. 5101.28 addresses the sharing and exchange of information about a public assistance recipient between ODJFS or a CDJFS and a law enforcement agency. Pursuant to R.C. 5101.28(A)(1), a law enforcement agency must provide information about a public assistance recipient upon the request of ODJFS or a CDJFS, in order for ODJFS or the CDJFS "to determine, for eligibility purposes, whether a recipient or a member of a recipient's assistance group is a fugitive felon or violating a condition of probation, a community control sanction, parole, or a post-release control sanction imposed under state or federal law." A CDJFS has the discretionary authority to enter into a written agreement with a local law enforcement agency to establish procedures for accessing information. R.C. 5101.28(A)(2). In addition, to the extent permitted by federal law, ODJFS and a CDJFS are required to "provide information regarding recipients of public assistance under a program administered by [ODJFS] or a [CDJFS] pursuant to [R.C. Chapters 5107,

---

<sup>8</sup> R.C. 5101.27(F) authorizes ODJFS to "adopt rules defining 'authorized representative' for purposes of [R.C. 5101.27(C)(2)]." "Authorized representative" in the case of a recipient of OWF or DFA benefits is defined as "an individual, eighteen years of age or older, who stands in the place of the assistance group" and who "may act on behalf of individuals inside or outside the household in which the authorized representative lives." 12 Ohio Admin. Code 5101:1-2-01(A)(2). "Authorized representative" in the case of a recipient of SNAP benefits is defined as "a representative who the assistance group chooses to act on their behalf." 14B Ohio Admin. Code 5101:4-2-05(A).

<sup>9</sup> R.C. 1347.08 sets forth the rights of an individual to access personal information held in a personal information system by a state or local agency.

5108, or 5115]<sup>10</sup> to law enforcement agencies on request for the purposes of investigations, prosecutions, and criminal and civil proceedings that are within the scope of the law enforcement agencies' official duties." R.C. 5101.28(B). Regardless of whether the information about a public assistance recipient is requested to be shared pursuant to R.C. 5101.28(A) or R.C. 5101.28(B), the information "shall be exchanged, obtained, or shared only if [ODJFS], [a CDJFS], or law enforcement agency requesting the information gives sufficient information to specifically identify the recipient." R.C. 5101.28(C). In addition to a recipient's name, examples of identifying information include "the recipient's current or last known address, social security number, other identifying number, age, gender, physical characteristics, any information specified in an agreement entered into under [R.C. 5101.28(A)], or any information considered appropriate by [ODJFS or a CDJFS]." R.C. 5101.28(C).

Therefore, pursuant to R.C. 5101.28, a CDJFS is required to release information about a recipient of OWF or DFA benefits to a law enforcement agency upon the request of the law enforcement agency for the purpose of any investigation, prosecution, or civil or criminal proceeding within the scope of the duties of the requesting law enforcement agency. R.C. 5101.28(B). However, information shall only be released or exchanged if the law enforcement agency "gives sufficient information to specifically identify the recipient." R.C. 5101.28(C).

We will now consider the administrative rules adopted under R.C. 5101.30, a third exception to the broad prohibition of R.C. 5101.27, to determine whether a CDJFS may release information about a recipient of OWF, DFA, or SNAP benefits to a law enforcement agency. The Director of Job and Family Services has the authority to adopt rules implementing R.C. 5101.26-30 and specifying the conditions and procedures under which information about a public assistance recipient may be disclosed by ODJFS or a CDJFS. R.C. 5101.30(A)(1). 12 Ohio Admin. Code 5101:1-1-03 governs, *inter alia*, the disclosure of recipient information. Rule 5101:1-1-03(A) provides "[a]ll information and records concerning a recipient of disability financial assistance (DFA) pursuant to [R.C. Chapter 5115], Ohio works first (OWF) pursuant to [R.C. Chapter 5107], and prevention, retention and contingency (PRC) pursuant to [R.C. Chapter 5108] are confidential." The rule provides further that "[n]o information or records regarding applicants, recipients, or former recipients of any of the programs listed in [rule 5101:1-1-03(A)] is to be released to anyone except as provided in [R.C. 5101.27-.28], including an entity administering a program assisting needy individuals with the costs of public utility services or as otherwise delineated in this rule pursuant to [R.C. 5101.30]." Rule 5101:1-1-03(A). Division (B) of rule 5101:1-1-03 identifies several entities to which information and records about recipients of OWF, DFA, and PRC benefits may be released. Rule 5101:1-1-03(B)(7) addresses the release of information to law enforcement agencies and requires ODJFS and a CDJFS to "provide information, except information directly related to the receipt of medical assistance or medical services, regarding recipients of public assistance under a program administered by the

---

<sup>10</sup> R.C. Chapter 5107 establishes the OWF program. R.C. Chapter 5108 establishes the prevention, retention and contingency (PRC) program. R.C. Chapter 5115 establishes the DFA program.

ODJFS or a [CDJFS] pursuant to [R.C. Chapters 5107, 5108, or 5115] to law enforcement agencies upon request for the purposes of investigations, prosecutions, and criminal and civil proceedings that are within the scope of the law enforcement agencies' official duties." Consistent with the qualification imposed by R.C. 5101.28(C), rule 5101:1-1-03(B)(8) states "[i]nformation about a recipient shall be exchanged, obtained, or shared only if ODJFS, the county agency, or law enforcement agency requesting the information gives sufficient information to specifically identify the recipient." The rule provides examples of identifying information that includes, in addition to a recipient's name, "the recipient's current or last known address, social security number, other identifying number, age, gender, physical characteristics, any information specified in an agreement entered into under [R.C. 5101.28], or any information considered appropriate by ODJFS or the county agency." *Id.*

Having considered R.C. 5101.27, R.C. 5101.28, and the administrative rules adopted under R.C. 5101.30, we conclude that a CDJFS is authorized to provide information about a recipient of OWF, DFA, or SNAP benefits to a law enforcement agency under limited circumstances. First, a CDJFS may release information about a recipient of OWF, DFA, or SNAP benefits if a written authorization that complies with R.C. 2101.272 is provided by the recipient. R.C. 5101.27(D)(1), (E). Second, a CDJFS must release information about a recipient of OWF, DFA, or SNAP benefits to a law enforcement agency if releasing the information is for the purpose of any investigation, prosecution, or criminal or civil proceeding, relating to the administration of OWF, DFA, or SNAP. R.C. 5101.27(B). Third, a CDJFS must release information about a recipient of OWF or DFA benefits upon the request of a law enforcement agency for the purpose of investigations, prosecutions, and criminal and civil proceedings within the scope of the law enforcement agency's official duties, R.C. 5101.28(B); rule 5101:1-1-03(B)(7), so long as the law enforcement agency requesting the information gives sufficient information to specifically identify the recipient, R.C. 5101.28(C); rule 5101:1-1-03(B)(8).

To determine whether there are additional sources of authority for a CDJFS to release information about a SNAP recipient to a law enforcement agency, we must consider R.C. 5101.54 and its corresponding administrative rules. R.C. 5101.54(A)(6) authorizes ODJFS to "[e]nter into interagency agreements and cooperate with investigations conducted by the department of public safety, including providing information for investigative purposes, exchanging property and records . . . , and meeting any other requirements necessary for the detection and deterrence of illegal activities in the supplemental nutrition assistance program[.]" This provision, however, does not speak to the duties of a CDJFS in providing information about a SNAP recipient to a law enforcement agency. We, therefore, turn to the administrative rules.

14B Ohio Admin. Code 5101:4-1-13 addresses the disclosure of information about a SNAP benefit recipient. Use or disclosure of case file information about a recipient of SNAP benefits to an

individual that is not part of the same assistance group<sup>11</sup> is limited to certain conditions and individuals. Rule 5101:4-1-13(A)(7). Rule 5101:4-1-13(A)(7)(a) identifies certain individuals who may be provided case file information without being required to make a written request:

(i) Persons directly connected with the administration or enforcement of the provisions of the Food and Nutrition Act or regulations, other federal assistance programs, or federally assisted state programs which provide assistance on a means-tested basis to low-income individuals or local or state Ohio works first (OWF) assistance programs. Examples are medicaid, supplemental security income (SSI) and disability financial assistance (DFA) program personnel, persons directly connected with nutrition education and program information efforts, state and local personnel connected with the emergency food assistance program (TEFAP), local county prosecutors investigating possible food assistance fraud, officials from the office of inspector general, auditor of state's office, ODJFS bureau of external audits, and management evaluation (ME) and quality assurance (QA) reviewers.

(ii) Employees of the comptroller general's office of the United States for audit examination authorized by any other provision of law.

(iii) Persons directly connected with the administration or enforcement of the programs that are required to participate in the income and eligibility verification system (IEVS), to the extent the food assistance information is useful in establishing or verifying eligibility or benefit amounts under those programs.

(iv) Persons directly connected with the administration of the child support program under part D, Title IV of the Social Security Act of 1935 in order to assist in the administration of that program, and employees of the secretary of health and human services as necessary to assist in establishing or verifying eligibility or benefits under Titles II and XVI of the Social Security Act.

(v) Persons directly connected with the verification of immigration status of aliens applying for food assistance benefits, through the systematic alien verification for entitlements (SAVE) program, to the extent the information is necessary to identify the individual for verification purposes.

In addition, case file information may be disclosed to “[p]ersons indirectly connected with the enforcement of the provisions of the Food and Nutrition Act or regulations, such as local, state or federal law enforcement officials, upon their written request for the purpose of investigating an alleged violation of the Food and Nutrition Act or regulations.” Rule 5101:4-1-13(A)(7)(b). When such a request for disclosure is made by a person indirectly connected with the enforcement of the Food and

---

<sup>11</sup> An assistance group is defined as “those persons potentially eligible or determined eligible to receive benefits together under one assistance group name.” 14B Ohio Admin. Code 5101:4-1-03(B)(4). An assistance group name is “the case name.” Rule 5101:4-1-03(B)(5).

Nutrition Act, “[t]he written request shall include the identity of the individual requesting the information and his authority to do so, the violation being investigated, and the identity of the person on whom the information is requested.” *Id.* The investigation must “concern[] an assistance group fraudulently obtaining benefits or otherwise violating the Food and Nutrition Act or regulations.” *Id.* Disclosure of the information may not occur until the request is made in writing. *Id.*

A local, state, or federal law enforcement officer may request in writing the address, Social Security number, and photograph of a member of an assistance group if:

- (i) [the member of the assistance group] [i]s fleeing to avoid prosecution or custody for a crime, or an attempt to commit a crime, that would be classified as a felony (or in the state of New Jersey, a high misdemeanor); or
- (ii) [the member of the assistance group] [i]s violating a condition of probation or parole imposed under a federal or state law.

*Id.* The individual requesting the address, Social Security number, or photograph must include in the written request the requesting individual’s identity and authority to make the request. *Id.* The written request must “also include the identity of the individual who is suspected of fleeing, including but not limited to, the full name, date of birth, and documentation indicating the person is fleeing to avoid prosecution or custody for a felony ... or has violated a condition of probation or parole[.]” *Id.* Examples of documentation indicating that the individual is fleeing to avoid prosecution or custody, or that the individual has violated a condition of probation or parole are “factual details, copies of the police incident report and a copy of the felony warrant that was issued” or “a copy of the alleged infraction and arrest warrant issued.” *Id.*

In response to a written request from a law enforcement officer acting in his official capacity, a CDJFS is obligated to provide the requested information about an assistance group member “where such [assistance group] member has information necessary for the apprehension or investigation of another [assistance group] member who is fleeing to avoid prosecution or custody for a felony, or has violated a condition of probation or parole.” Rule 5101:4-1-13(A)(7)(b). “In all other cases (including requests from law enforcement officials conducting non-food assistance related investigations), a waiver signed by the recipient on whom the information is requested must be secured by the [CDJFS] and retained in its files.” Rule 5101:4-1-13(A)(7)(c).

Thus, it is apparent that whether a CDJFS may release information about a recipient of SNAP benefits to a law enforcement agency is dependent upon the purposes for which the law enforcement agency is requesting the information. Information about a recipient of SNAP benefits may be released to a local county prosecutor without a written request, if the county prosecutor is investigating possible food assistance fraud. Rule 5101:4-1-13(A)(7)(a)(i). Information about a SNAP recipient may be released to local, state, or federal law enforcement officials upon their written request, if the purpose of the request is the investigation of an alleged violation of the Food and Nutrition Act or regulations thereunder. Rule 5101:4-1-13(A)(7)(b). Such investigations must involve an allegation of an assistance group fraudulently obtaining benefits or another violation of the Food and Nutrition Act

or its regulations. *Id.* The written request must include the identity of the official making the request, the alleged violation that is being investigated, as well as, the identity of the person about whom the information is being requested. *Id.* Additionally, upon written request, the address, Social Security number or photograph of a member of a SNAP assistance group may be released to a local, state, or federal law enforcement officer, if the assistance group member is fleeing to avoid prosecution or custody for a felony, or an attempt to commit a felony, or for violating a condition of probation or parole. Rule 5101:4-1-13(A)(7)(b). A written request for the address, Social Security number, or photograph of a SNAP assistance group member allegedly fleeing to avoid prosecution or custody must include the identity of the fleeing assistance group member and documentation that the individual is fleeing prosecution or custody. *Id.* Similarly, a CDJFS must release information about a SNAP assistance group member who has information necessary for the apprehension or investigation of another assistance group member who is fleeing prosecution or custody to a law enforcement officer that is acting in his official capacity and who has provided a written request for the information. *Id.* If a law enforcement official is conducting non-food assistance related investigations, a CDJFS may release information about a SNAP recipient or assistance group only if a waiver is signed by the recipient. Rule 5101:4-1-13(A)(7)(c).

#### **Authority to Release the Names and Address of a Public Assistance Recipient's Household Members**

We turn to the question of whether the names and address of a public assistance recipient's household members may be released by a CDJFS to a law enforcement agency. Eligibility for and the amount of benefits awarded under OWF, DFA, and SNAP are determined on the basis of assistance groups. R.C. 5107.02(B) (for purposes of OWF, an assistance group is defined as "a group of individuals treated as a unit for purposes of determining eligibility for and the amount of assistance provided under Ohio works first"); 12 Ohio Admin. Code 5101:1-23-10(G)(5) ("eligibility [for OWF] is determined for the assistance group as a whole"); rule 5101:1-5-01(C)(1) ("the DFA 'assistance group' is defined as a group of applicants for or recipients of DFA who are living together and treated as a unit for purposes of determining eligibility for DFA and establishing the amount of DFA benefits for which the group is eligible"); 12 Ohio Admin. Code 5101:1-5-30(A) ("to be eligible for disability financial assistance (DFA) the resources of all members of the family group ... shall be evaluated in terms of value and availability"); rule 5101:4-1-03(B)(4) (a SNAP "'assistance group' means those persons potentially eligible or determined eligible to receive benefits together under one assistance group name"). An OWF, DFA or SNAP assistance group is composed of persons who live together in the same household. *See* rule 5101:1-23-10(G) (to determine the OWF assistance group begin with a minor child on whose behalf the assistance is being requested and then include siblings and the natural or adoptive parents of the child who are living in the same household as the minor child); rule 5101:1-5-01(C)(1) ("the assistance group is formed by selecting all of the covered individuals, from the family group"); rule 5101:1-5-01(B)(1) ("the DFA 'family group' is defined as the assistance group ... and any persons related to any member of the assistance group by blood, adoption (i.e., parents and their children), or marriage *who are living in the same home* as the assistance group") (emphasis added); rule 5101:4-1-03(B)(5) (a SNAP "'assistance group name' means the case name"); rule 5101:4-1-03(B)(8) (for the purposes of SNAP benefits a "'case' means

all assistance groups who live in the same household”); 14B Ohio Admin. Code 5101:4-2-03(A) (a SNAP assistance group is composed of individuals or groups of individuals living together who purchase food and prepare meals together, or who are treated as doing so because they live in the same home). In addition, ODJFS Form 07200, Request for Cash, Food, and Medical Assistance, requires an applicant for public assistance to identify all of the applicant’s household members, even if the members are not applying for benefits.

Thus, the names of persons who reside in the same home as a public assistance recipient are collected and used by a CDJFS in order to administer OWF, DFA, and SNAP. The names of household members are, therefore, information about a public assistance recipient. Furthermore, a recipient’s household members, if part of an assistance group, are recipients of public assistance. Accordingly, a CDJFS’s authority to release the names and address of a recipient’s household members is controlled by the same statutes and rules that control the authority of a CDJFS to release information about the recipient of OWF, DFA, or SNAP benefits.

### **Release of Information about a Public Assistance Recipient Pursuant to Subpoena**

We now turn to your final question, which asks whether a CDJFS is immune from a subpoena. We understand your question to be whether a CDJFS may release information about a recipient of OWF, DFA, or SNAP benefits pursuant to a civil or criminal subpoena.<sup>12</sup> Discovery in a civil case is limited to “any matter, not privileged, which is relevant to the subject matter involved in the pending action[.]” Ohio R. Civ. P. 26(B)(1). The information sought, whether or not admissible at trial, must appear to be “reasonably calculated to lead to the discovery of admissible evidence.” *Id.* Ohio R. Civ. P. 45 controls the issuance of a subpoena to a non-party in a civil case.<sup>13</sup> Pursuant to that rule, “[o]n timely motion, the court from which the subpoena was issued shall quash or modify the subpoena, or order appearance or production only under specified conditions, 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).

---

<sup>12</sup> For purposes of this opinion, we address the question whether a CDJFS may release information about a recipient of OWF, DFA, or SNAP benefits in response to a subpoena issued pursuant to Ohio R. Civ. P. 45 and Ohio R. Crim. P. 17. This opinion does not address the release of such information pursuant to a subpoena issued under the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure, the Ohio Rules of Juvenile Procedure, R.C. 2935.23 (felony investigatory subpoena), or R.C. 2939.12 (grand jury subpoena).

<sup>13</sup> Ohio R. Civ. P. 30 sets forth the terms upon which the attendance of a party at a deposition may be compelled. Production of documents, electronically stored information, tangible things, and the entrance upon land or property in the possession or under the control of a party may be compelled in accordance with Ohio R. Civ. P. 34.

In a criminal case, Ohio R. Crim. P. 16 sets forth the items a prosecuting attorney and a defendant must disclose to each other through discovery. “Materials that by law are subject to privilege, or confidentiality, or are otherwise prohibited from disclosure” are not required to be disclosed. Ohio R. Crim. P. 16(J)(3). Ohio R. Crim. P. 17 governs the issuance of a subpoena in a criminal case. A subpoena requesting the production of documentary evidence may be quashed or modified “if compliance would be unreasonable or oppressive.” Ohio R. Crim. P. 17(C).

Whether information held by a public office is discoverable in connection with a criminal or civil proceeding is an entirely distinct question from whether the same information may be released to the public at large. *State ex rel. Multimedia, Inc. v. Whalen*, 48 Ohio St. 3d 41, 42, 549 N.E.2d 167 (1990) (“[w]e find no analogy between discovery and open records disclosure”); *Lindley v. Ferguson*, 53 Ohio App. 2d 203, 209, 373 N.E.2d 386 (Franklin County 1976) (“[t]he power of subpoena is entirely separate and distinct from a citizen’s right of inspection of public records”). The Ohio Supreme Court has recognized that the determination of whether information sought to be disclosed is privileged or confidential is a question of law. *Medical Mut. of Ohio v. Schlotterer*, 122 Ohio St. 3d 181, 2009-Ohio-2496, 909 N.E.2d 1237, at ¶13 (“whether the information sought is confidential and privileged from disclosure is a question of law that is reviewed de novo”); *Scott Elliott Smith Co. v. Carasalina, L.L.C.*, 192 Ohio App. 3d 794, 2011-Ohio-1602, 950 N.E.2d 624, at ¶14; *Wessell Generations, Inc. v. Bonnifield*, 193 Ohio App. 3d 1, 2011-Ohio-1294, 950 N.E.2d 989, at ¶14; *Price v. Karatjas*, Summit App. No. 25361, 2011-Ohio-1048, at ¶8. The degree of confidentiality attributed to the information sought to be disclosed depends upon the language of the controlling statute. 2010 Op. Att’y Gen. No. 2010-029, at 2-211; *see also id.* (“[i]t is axiomatic that the ‘confidentiality of information kept by a public office is a matter of specific statute’” (quoting 1990 Op. Att’y Gen. No. 90-007, at 2-30)).

As discussed above, R.C. 5101.27 prohibits the disclosure of information about a public assistance recipient, including a recipient of OWF, DFA, and SNAP benefits, except under limited circumstances and for particular purposes. Courts in Ohio have ruled upon the scope of confidentiality afforded by R.C. 5101.27 in the context of discovery related to a civil or criminal proceeding. In *U.S. v. Martin*, No. CR-02-08-046, 2008 WL 2812016, at \*1 (S.D. Ohio July 21, 2008), a subpoena, in connection with an on-going criminal prosecution, was issued to the Butler County Department of Job and Family Services requesting production of documents related to services provided by the county agency. The subpoena requested that the documents be delivered directly to the court. *Id.* The Butler County Department of Job and Family Services filed a motion to quash the subpoena asserting that the subpoena required disclosure of matters that were privileged or confidential under R.C. 5101.27. *Id.* The court denied the motion to quash based on the language of R.C. 5101.27(B)(2), which authorizes the release of information about a public assistance recipient to a law enforcement agency ““for the purpose of any investigation, prosecution, or criminal or civil proceeding relating to the administration of that public assistance program[.]”” *U.S. v. Martin*, No. CR-02-08-046, 2008 WL 2812016, at \*1 (S.D. Ohio July 21, 2008) (quoting R.C. 5101.27(B)(2)). The court also noted that “additional measures [were taken] to ensure that the documents submitted in response to the subpoenas remain strictly confidential.” *Id.* The court ordered “the original documents [to] remain with the Court” and ordered the United States and the defendant to “hold any

duplicates they may create in the strictest of confidence.” *Id.* “[T]he parties [were also ordered] not to disclose the information contained in the documents except to the extent they must share it with their investigating agents, attorneys, experts and clients.” *Id.*

In *Wessell Generations, Inc. v. Bonnifield*, 193 Ohio App. 3d 1, 2011-Ohio-1294, 950 N.E.2d 989, at ¶2, a nursing home sought to recover an unpaid balance in a civil proceeding. The nursing home issued a subpoena to the Lorain County Department of Job and Family Services for the purpose of compelling an employee of the county agency to appear and give testimony regarding an application for Medicaid benefits. *Id.* at ¶5. The employee and the county agency filed a motion to quash the subpoena on the ground that R.C. 5101.27 prohibited the employee from disclosing information about an applicant for or recipient of Medicaid benefits. *Id.* The trial court denied the motion to quash. *Id.* at ¶7. The court of appeals held that “R.C. 5101.27 does not provide an absolute bar to civil discovery but instead provides a qualified privilege to protect the confidentiality of information about applicants and recipients of Medicaid.” *Id.* at ¶27. The court of appeals further stated that “[t]he trial court must resolve discovery disputes involving any such information on a case-by-case basis, through an in camera review of the information where appropriate, and by balancing competing interests to determine whether the litigant’s need for the information outweighs the public’s interest in preserving its confidentiality.” *Id.*

It is evident from those two cases that information about a recipient of public assistance that is protected by R.C. 5101.27 may be disclosed in response to a subpoena issued pursuant to Ohio R. Civ. P. 45 or Ohio R. Crim. P. 17 depending upon the facts and circumstances of each case. Even though R.C. 5101.27 restricts the release of information, the degree of protection afforded the information when it is the subject of a subpoena issued in connection with a civil or criminal proceeding is dependent upon the language of the statute and the facts and circumstances of each case. While R.C. 5101.27 has been interpreted to make such information confidential, the confidentiality is not an absolute bar to discovery of the information. Thus, when information that is protected by R.C. 5101.27 is sought by subpoena, a CDJFS must determine whether the relevant statutes and administrative rules permit the county agency to release the information. If a CDJFS concludes that the relevant statutes and administrative rules mandate release of the information, they must release the information. However, in those cases in which a CDJFS determines that releasing the requested information is not permitted under the relevant statutes and administrative rules, a CDJFS may file a motion to quash the subpoena. Depending upon the particular facts and circumstances of the case, a court may or may not grant the motion to quash.<sup>14</sup> Therefore, when a CDJFS files a motion to quash a

---

<sup>14</sup> A county prosecuting attorney “may inquire into the commission of crimes within the county” and has a duty to prosecute criminal cases on behalf of the state. R.C. 309.08(A). In addition, a CDJFS established under R.C. 329.01 and its director shall receive legal advice from and be represented by the county’s prosecuting attorney. *See* R.C. 309.09(A) (“[t]he prosecuting attorney shall be the legal advisor of ... all ... county officers and boards”); 2005 Op. Att’y Gen. No. 2005-

---

025, at 2-261 (“a county department of job and family services established under R.C. 329.01 ... is a subordinate unit of the county”); 1987 Op. Att’y Gen. No. 87-090, at 2-599 (“pursuant to R.C. 309.09(A), the county prosecutor is the statutory counsel for the county department of human services [now known as a CDJFS, R.C. 329.011] and, as such, must prosecute and defend all suits and actions which the county department of human services directs or to which it is a party”); 1983 Op. Att’y Gen. No. 83-078, at 2-318 (a director of a county department of welfare (now known as a county director of job and family services, R.C. 329.011) is a county officer). The county prosecuting attorney of the most populous county that is part of a joint CDJFS established under R.C. 329.40 shall be the legal advisor of the joint CDJFS and its board of directors, “unless the counties that formed the joint county department agree to appoint the prosecuting attorney of another county that formed the joint county department as legal advisor of the board.” R.C. 329.43(A).

If a CDJFS determines that a subpoena issued by the county prosecuting attorney, who also serves as the CDJFS’s legal advisor, seeks the release of information that the CDJFS is not permitted to release, a county prosecuting attorney may face a conflict of interest with respect to his duty to prosecute criminal cases under R.C. 309.08(A) and his duty to represent a CDJFS under R.C. 309.09(A) or R.C. 329.43(A). In such a circumstance, the law provides a mechanism for a CDJFS to receive legal counsel from an attorney other than the county prosecuting attorney. With respect to a CDJFS established under R.C. 329.01, R.C. 309.09(A) states “no county officer may employ any other counsel or attorney at the expense of the county, except as provided in [R.C. 305.14].” R.C. 305.14(A) provides:

[t]he court of common pleas, upon the application of the prosecuting attorney and the board of county commissioners, may authorize the board to employ legal counsel to assist the prosecuting attorney, the board, or any other county officer in any matter of public business coming before such board or officer, and in the prosecution or defense of any action or proceeding in which such board or officer is a party or has an interest, in its official capacity.

“[N]otwithstanding the express language of R.C. 305.14(A), the common pleas court may act to appoint counsel other than the prosecuting attorney ... if the prosecuting attorney has a conflict of interest *even in the absence of the joint application specified in R.C. 305.14(A)* when the prosecutor refuses to join in the application.” *State ex rel. Hamilton Cnty. Bd. of Comm’rs v. Hamilton Cnty. Court of Common Pleas*, 126 Ohio St. 3d 111, 2010-Ohio-2467, 931 N.E.2d 98, at ¶28 (citing *State ex rel. Corrigan v. Seminatore*, 66 Ohio St. 2d 459, 423 N.E.2d 105 (1981) (syllabus, paragraph 1)); accord 1986 Op. Att’y Gen. No. 86-036, at 2-190 (if a conflict of interest exists between the prosecuting attorney’s duty to prosecute criminal cases and to serve as legal advisor for a county board, “then other legal counsel may be employed to represent said board pursuant to R.C. 305.14, even though the prosecuting attorney does not join the county commissioners in submitting an application to the court of common pleas pursuant to that section”).

law enforcement agency's subpoena seeking information about a recipient of OWF, DFA, or SNAP benefits, whether the county agency is required to release the information must be determined by a court of competent jurisdiction on a case-by-case basis.

### **Conclusions**

It is, therefore, my opinion, and you are hereby advised that:

1. A county department of job and family services' authority to release information about a recipient of Ohio Works First (OWF), Disability Financial Assistance (DFA), or Supplemental Nutrition Assistance Program (SNAP) benefits to a law enforcement agency is controlled by R.C. 5101.27-.30, R.C. 5101.54, 12 Ohio Admin. Code 5101:1-1-03, 14B Ohio Admin Code 5101:4-1-13, and federal law.
2. A county department of job and family services' authority to release the names and address of an OWF, DFA, or SNAP recipient's household members is controlled by the same statutes and rules that control the department's authority to release information about the recipient of OWF, DFA, or SNAP benefits.
3. Information about a recipient of OWF, DFA, or SNAP benefits may be disclosed in response to a subpoena issued pursuant to Ohio R. Civ. P. 45 or Ohio R. Crim. P. 17 depending upon the facts and circumstances of each case. When a county department of job and family services files a motion to quash a law enforcement agency's subpoena seeking information about a recipient of OWF, DFA, or SNAP benefits, whether the county agency is required to

---

With respect to a joint CDJFS established under R.C. 329.40, the board of directors of a joint CDJFS may employ legal counsel other than the prosecuting attorney on a yearly basis if the prosecuting attorney agrees. R.C. 329.43(C)(1). "If the prosecuting attorney does not agree, the board of directors may apply to the court of common pleas of the county with the largest population that formed the joint county department for authority to employ other legal counsel on an annual basis." *Id.* The same process is authorized to employ legal counsel other than the prosecuting attorney to represent or advise the board on a particular matter. R.C. 329.43(C)(2). If an application is filed pursuant to R.C. 329.43(C)(1) or (C)(2), the court of common pleas may approve the employment of other legal counsel "only if it finds that the prosecuting attorney refuses or is unable to provide the legal services that the board requires." R.C. 329.43(C)(3).

release the information must be determined by a court of competent jurisdiction on a case-by-case basis.

Very respectfully yours,

A handwritten signature in blue ink that reads "Michael Dewine". The signature is written in a cursive style with a large initial "M" and a long, sweeping underline.

MICHAEL DEWINE  
Ohio Attorney General