Note from the Attorney General's Office:

The syllabus paragraph 3 of 1990 Op. Att'y Gen. No. 90-101 was modified and clarified by 2017 Op. Att'y Gen. No. 2017-042.

OPINION NO. 90-101

Syllabus:

1. Absent an applicable exception in state or federal law, upon the request of any person, local law enforcement agencies and the county prosecutor must release records containing the names of juvenile offenders and other identifying data.

2. To the extent that a specific exception in R.C. 149.43 or an applicable provision of state or federal law prohibits their release, local law enforcement agency records concerning juvenile offenders are not public records under R.C. 149.43 and the public does not have a right to inspect and receive copies of such records under the Public Records Act.

3. If, pursuant to R.C. 2151.313, a law enforcement officer or other authorized person takes fingerprints or photographs of a juvenile arrested or taken into custody, the fingerprints, photographs and other records relating to that arrest or custody of the juvenile are not public records.

4. When a record of the adjudication or arrest of a juvenile has been ordered sealed or expunged pursuant to R.C. 2151.358, such record is not a public record.

5. For purposes of the confidential law enforcement investigatory records exception under R.C. 149.43(A), a juvenile may be considered a "suspect" when no charge, arrest, complaint or referral to the juvenile court pursuant to Ohio R. Juv. P. 9 has been made.

6. For purposes of the confidential law enforcement investigatory records exception under R.C. 149.43(A), a juvenile ceases to be a "suspect" upon arrest, being charged, the filing of a complaint or a referral to the juvenile court pursuant to Ohio R. Juv. P. 9.

7. A decision, at a particular point in time, not to charge, arrest, file a complaint with or refer a juvenile to the juvenile court pursuant to Ohio R. Juv. P. 9 does not require disclosure or terminate the juvenile's status as a "suspect," pursuant to R.C. 149.43(A).

8. Pursuant to Ohio R. Juv. P. 32(B), Ohio R. Juv. P. 37(B) and R.C. 2151.14, juvenile court records, the records of social, mental and physical examinations pursuant to court order, and records of the juvenile court probation department are not public records under R.C. 149.43.

To: Jeffrey M. Welbaum, Miami County Prosecuting Attorney, Troy, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, December 31, 1990

I have before me your request for my opinion with respect to the confidentiality of records of law enforcement agencies concerning juvenile offenders.[1] Specifically, you have asked:

1. Upon request of a crime victim, or other interested parties, what obligation do local police agencies and the county prosecutor have to release the name[s] of juvenile offenders, other identifying data and police and investigative records and reports, after a complaint has been filed in Juvenile Court against the suspected offender[?]

2. Similarly, what obligation exists when a determination has been made that no formal complaint against the juvenile will be filed[?]

The concern expressed in your letter, and reflected in your questions, focuses upon the paradoxical treatment of records regarding juveniles under Ohio law: juvenile records kept by law enforcement agencies are generally public records under R.C. 149.43, while the same information maintained as part of a juvenile court's file in the same case is *not* a public record and, therefore, *not* open to public inspection.

Before examining the Ohio Public Records Act, R.C. 149.43 and related sections, a brief examination of the nature of law enforcement records regarding juvenile offenders is required. Nationwide, law enforcement agencies have broad

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[1] By the use of the term "juvenile offender" in your request, I assume that your questions are restricted to factual circumstances where a juvenile is subject to law enforcement scrutiny as a suspected or adjudicated "delinquent child" under R.C. 2151.02, or as a suspected or adjudicated "juvenile traffic offender" under R.C. 2151.021.

discretion to create and maintain records of their contact with juveniles. *See* U.S. Dept. of Justice, *Privacy and Juvenile Justice Records* 29 (1982). Few provisions in the Ohio Revised Code mandate the creation and maintenance of specific records regarding juvenile offenders. *But see* R.C. 2151.313 (records of arrest or custody where fingerprints or photographs of child taken); R.C. 2151.358 (sealing and expungement of records of public offices and agencies having records of adjudication or arrest of child). Lacking a specific provision of law directing how a particular duty is to be executed, it may be carried out in any reasonable manner. *See, e.g., State ex rel. Hunt v. Hildebrant*, 93 Ohio St. 1, 112 N.E. 138 (1915), *aff'd*, 241 U.S. 565 (1916); *Jewett v. Valley Ry. Co.*, 34 Ohio St. 601 (1878). The various law enforcement agencies with jurisdiction over juvenile offenders, thus, may create and use whatever records they reasonably find administratively necessary.

The reference to "juvenile", as the term is used in your request, equates with the statutory definition of "child", as set forth by R.C. 2151.011(B)(1), which states, in pertinent part, "'child' means a person who is under the age of eighteen years." A juvenile, who commits an offense that would be a criminal violation if committed by an adult, or who commits a traffic offense that comes to the attention of a law enforcement officer, may be brought within the formal juvenile adjudication system embodied as the juvenile court. *See* R.C. 2151.011(A)(1) (juvenile court as either a division of the court of common pleas or a separately and independently created court, has jurisdiction pursuant to R.C. Chapter 2151); R.C. 2151.02 (delinquent child defined); R.C. 2151.021 (juvenile traffic offender defined); R.C. 2151.27 (complaint against juvenile traffic offender or delinquent child); R.C. 2151.31 (apprehension, custody and detention); R.C. 2151.28 (adjudicatory hearing).

R.C. Chapter 2151 sets forth in considerable detail the Ohio juvenile justice system. The express purposes of the juvenile justice system, as enumerated by R.C. 2151.01, are:

> (A) To provide for the care, protection, and mental and physical development of children subject to Chapter 2151. of the Revised Code;
>
> (B) To protect the public interest in removing the consequences of criminal behavior and the taint of criminality from children committing delinquent acts and to substitute therefor a program of supervision, care, and rehabilitation;
>
> (C) To achieve the foregoing purposes, whenever possible, in a family environment, separating the child from its parents only when necessary for his welfare or in the interests of public safety;
>
> (D) To provide judicial procedures through which Chapter 2151. of the Revised Code is executed and enforced, and in which the parties are assured of a fair hearing, and their constitutional and other legal rights are recognized and enforced.

The mission of the Ohio juvenile justice system is to insure the welfare of children and to provide social and rehabilitative services. *See State ex rel. Dispatch Printing Co. v. Solove (In re T.R.)*, 52 Ohio St. 3d 6, 556 N.E.2d 439 (1990); *In re Agler*, 19 Ohio St. 2d 70, 249 N.E.2d 808 (1969); *Children's Home of Marion County v. Fetter*, 90 Ohio St. 110, 127, 106 N.E. 761, 766 (1914) ("[t]he legislature in the exercise of its police power, in order to protect children and to remove them from evil influences, has established the juvenile court"); W. Kurtz & P. Giannelli, *Ohio Juvenile Law* (2d ed. 1989); W. Whitlach, *The Juvenile Court—A Court of Law*, 18 Case W. Res. L. Rev. 1239 (1967); D. Young, *A Synopsis of Ohio Juvenile Court Law*, 31 U. Cin. L. Rev. 131 (1962).

To aid in rehabilitation and to avoid stigmatization of juveniles subject to juvenile court proceedings, juvenile *court* records have been enveloped with a considerable degree of confidentiality. *In re T.R.*, 52 Ohio St. 3d at 15, 556 N.E.2d at 449; Ohio R. Juv. P. 37(B) ("[n]o public use shall be made by any person, including a party, of any juvenile court record, including the recording or a transcript thereof of any juvenile court hearing, except in the course of an appeal or as authorized by order of the court"); Kurtz & Giannelli at 225–231; *see also* Ohio R. Juv. P. 32(B) (records of social histories and mental and physical examinations of children pursuant to court order may not be used for purposes other than as specified in Ohio

R. Juv. P. 32(A). In addition, records of the juvenile probation department, an adjunct of the juvenile court, are confidential. R.C. 2151.14; *State v. Sherow*, 101 Ohio App. 169, 138 N.E.2d 444 (Gallia County 1956).

Not all juveniles who commit an act of delinquency, however, are brought within the formal juvenile adjudication system. Informal screening and informal proceedings by the court and agencies under the direction of the court have long been a recognized practice in Ohio. *See In re Douglas*, 164 N.E.2d 475 (Juv. Ct. Huron County 1959); R.C. 2151.14; R.C. 2151.35. Ohio R. Juv. P. 9(B), for example, encourages the informal screening of information indicating that a child is within the juvenile court's jurisdiction, to determine if it is in the best interests of the child and the public to file a complaint. Moreover, Ohio R. Juv. P. 9(A) specifically encourages the utilization of "other community resources to ameliorate situations brought to the attention of the court." It, thus, appears that these "informal proceedings," when held by an agency of the court, fall within the confidentiality protections sheltering formal juvenile court adjudication under Rule 37(B).

Only some juvenile offenders, however, are brought within the network of formal and informal juvenile court proceedings. Although most juveniles subject to the juvenile justice system have their initial contact with a police officer, only about half of these children are referred to the juvenile court; the remainder receive a warning, a telephone call to their parents or a referral to a juvenile social service agency.[2] L. Siegel & J. Senna, *Juvenile Delinquency Theory, Practice and Law* 310, 393-94 (2d ed. 1985). To the extent, however, that local law enforcement agencies utilize their own informal procedures without referring a juvenile to the juvenile court, the confidentiality protections for juvenile court records are not available. 1987 Op. Att'y Gen. No. 87-010 at 2-59 n.3.

Despite the General Assembly's enactment of several Revised Code sections that prohibit the release of certain specified information related to juvenile justice, no comprehensive prohibition pertaining to all juvenile justice records exists.[3] Ohio statutes restricting the release of information kept by public offices, however, usually make only narrow classes of such information confidential. *See generally* 1990 Op. Att'y Gen. No. 90-007 at 2-30; 1988 Op. Att'y Gen. No. 88-103 at 2-510; J. Recchie & C. Wayland, *Ohio's Privacy Act: An Analysis*, 10 U. Tol. L. Rev. 159, 188 (1978). Absent a statute that expressly restricts public access to law enforcement records concerning juveniles, the provisions of the Public Records Act control public access.

It, therefore, must be determined whether law enforcement agency records regarding juvenile offenders are public records to which the public has access. The right of access to public records is codified by R.C. 149.43(B) which provides that:

> All public records shall be promptly prepared and made available for inspection to any person at all reasonable times during regular

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2 Law enforcement agencies "have traditionally been granted a great degree of discretionary authority in making dispositions of juvenile cases.... Because our system of justice emphasizes 'individualized justice,' the dispensing of justice requires a considerable amount of discretionary decision-making at the police level." U.S. Dep't of Justice, *Police-Juvenile Operations* 47 (1977); *see also* L. Siegel & J. Senna, *Juvenile Delinquency Theory, Practice, and Law* 393-94 (2d ed. 1985).

3 The Ohio General Assembly has also determined that certain records of agencies, other than the juvenile courts, that serve juvenile justice functions are confidential. *See, e.g.*, R.C. 5153.17 (certain records of public children services agencies, including social history of a child, are confidential); R.C. 5139.05(D) (records of the department of youth services pertaining to the children in its custody are accessible only to departmental employees or upon the order of the judge of a court of record); *see also* R.C. 2151.313; R.C. 2151.358.

> business hours. Upon request, a person responsible for public records shall make copies available at cost, within a reasonable period of time. In order to facilitate broader access to public records, governmental units shall maintain public records in such a manner that they can be made available for inspection in accordance with this division.

Inasmuch as the specific language in your first question supposes that a request for the identity of a juvenile offender will be made by "a crime victim, or other interested party," a brief discussion of who may request a public record is required. R.C. 149.43(B), in express language, states that "all public records shall be...made available for inspection to *any person*." (Emphasis added.) "Any person" under R.C. 149.43 includes individuals, corporations, business trusts, estates, trusts, partnerships and associations. 1990 Op. Att'y Gen. No. 90-050. A request to inspect a public record may be made by anyone regardless of such person's interest in the record. *Id.; see also State ex rel. Clark v. City of Toledo*, 54 Ohio St. 3d 55, ___ N.E.2d___ (1990); *State ex rel. Withworth Bros. Co. v. Dittey*, 12 Ohio N.P. (n.s.) 319 (C.P. Franklin County 1911). Given the broad class of persons entitled to access to public records, crime victims and interested parties are included within the class of "any person" who may request access to public records.

"Public record" is defined as:

> *any record*[4] that is *kept by any public office*, including, but not limited to, state, county, city, village, township, and school district units, *except* medical records, records pertaining to adoption, probation, and parole proceedings, records pertaining to actions under section 2151.85 of the Revised Code and to appeals of actions arising under that section, records listed in division (A) of section 3107.42 of the Revised Code, trial preparation records, *confidential law enforcement investigatory records, and records the release of which is prohibited by state or federal law.*

R.C. 149.43(A)(1) (emphasis and footnote added). Public records, thus, are all records of a public office, except those enumerated by R.C. 149.43(A)(1) specifically, or incorporated from another provision as a record "the release of which is prohibited by state or federal law."

Since your first question focuses on local police agencies and county prosecutors' offices as having custody of records relating to juvenile offenders, it is necessary to determine if these agencies are public offices for purposes of R.C. 149.43. R.C. 149.011(A), which sets forth the definition of terms as used in R.C. Chapter 149, defines "public office" as including "any state agency, public institution, political subdivision, or any other organized body, office, agency, institution, or entity established by the laws of this state for the exercise of any function of government." The office of county prosecuting attorney is established by R.C. 309.01 ("[t]here shall be elected quadrennially in each county, a prosecuting attorney"), and the prosecuting attorney's duties include "inquir[ing] into the commission of crimes within the county," R.C. 309.08. Local law enforcement agencies are also statutorily created. *See, e.g.*, R.C. 311.01 ("[a] sheriff shall be elected quadrennially in each county"); R.C. 509.01 ("[t]he board of township trustees may designate any qualified persons as police constables"); R.C. 737.05 ("[t]he police department of each city shall be composed of a chief of police and such other officers, policemen, and employees as the legislative authority thereof provides by ordinance"); R.C. 737.15 ("[e]ach village shall have a marshal, designated chief of

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[4] The information gathered by law enforcement agencies is a "record" to the extent that it is comprised of "any document, device, or item, regardless of physical form or characteristic, 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).

police"). It is clearly a governmental function to provide protection of the peace, morals, health and safety of the people. *See generally State ex rel. Village of Cuyahoga Heights v. Zangerle*, 103 Ohio St. 566, 134 N.E. 686 (1921); *State ex rel. Doerfler v. Price*, 101 Ohio St. 50, 128 N.E. 173 (1920). Local law enforcement agencies in Ohio have specified duties to protect the public peace, morals, health and safety. *See, e.g.*, R.C. 311.07 (the sheriff shall preserve the public peace); R.C. 509.10 (a township constable may apprehend and bring to justice all violators of the criminal laws and generally keep the peace); R.C. 737.11 (the duties of the police force of a municipal corporation include preserving the peace, protecting persons and property, enforcing the ordinances of the municipality, and all criminal laws of the United States and of the state). Both the county prosecuting attorney and local police agencies, thus, are agencies under state law that have significant law enforcement duties.[5] I, therefore, conclude that the prosecutors' offices and local police agencies are "public offices" for purposes of R.C. 149.43.

Law enforcement agencies have jurisdiction over juvenile law enforcement matters implicitly as part of their general police powers and as specifically provided by the General Assembly. *See, e.g.*, R.C. 2151.40 ("[e]very county, township, or municipal official or department, including the prosecuting attorney, shall render all assistance and co-operation within his jurisdictional power which may further the objects of sections 2151.01 to 2151.54 of the Revised Code"); R.C. 2151.31(A) (child may be taken into custody pursuant to the laws of arrest.) The documents, devices, and items that serve to document the activities of Ohio law enforcement agencies with jurisdiction over juvenile offenders are, thus, records and, to the extent no exception is applicable, public records.

While the Public Records Act does not contain an express provision enumerating juvenile justice records as exempt from the definition of "public record," the "confidential law enforcement investigation records" exception is the primary exception which may apply to some juvenile law enforcement records.[6] R.C. 149.43(A)(2) defines "confidential law enforcement investigatory record" as:

> any record that pertains to a law enforcement matter of a criminal, quasi-criminal, civil, or administrative nature, but only to the extent that the release of the record would create a high probability of disclosure of...
>
> (a) The identity of a suspect who has not been charged with the offense to which the record pertains....

The "identity of a suspect" information exempted from disclosure by R.C. 149.43(A)(2)(a) is the only type of information in the definition that directly relates to the identity of a juvenile offender. The remaining provisions of the confidential law enforcement investigatory record exception relate to law enforcement personnel, information sources, witnesses, investigatory techniques and specific investigatory work product, which your inquiry does not concern. To qualify as a "suspect," a juvenile would have to be subject to an investigation in which no enforcement action such as an arrest or citation had yet been taken. *See State ex rel. McGee v. Ohio State Bd. of Psychology*, 49 Ohio St. 3d 59, 550 N.E.2d 945 (1990); *State ex rel. Thompson Newspapers, Inc. v. Martin*, 47 Ohio St. 3d 28, 546 N.E.2d 939 (1989); *State ex rel. Outlet Communications, Inc. v. Lancaster Police Dep't.*, 38 Ohio St. 3d 324, 528 N.E.2d 175 (1988); Op. No. 87-010.

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5 For purposes of this opinion, I consider the county prosecuting attorney to be a law enforcement agency due to the significant statutory law enforcement duties vested in the position. Therefore, the term "law enforcement agencies" as used throughout this opinion shall include county prosecuting attorneys.

6 Your inquiry focuses on the "confidential law enforcement investigatory records" exception. While the "trial preparation records" exception in R.C. 149.43(A) may apply to the records discussed in this opinion in limited circumstances, you have not raised this issue and I, therefore, do not address it.

Further, the exception would appear to apply *only* to information that would create a high probability of disclosing the identity of the suspect, *not* to all of the information about the suspect. *See generally State ex rel. Toledo Blade Co. v. Telb*, 50 Ohio Misc. 2d 1, 552 N.E.2d 243 (C.P. Lucas County 1990). Inasmuch as the identity of a juvenile is likely to be only a minimal portion of the contents of a record of a law enforcement agency, it is probable that, in many cases, a record that contains confidential law enforcement investigatory record material will also contain information to which no specific exception applies. A particular record, thus, would likely contain both public record and non-public record material. The existence of non-public record material in such a document does not permit withholding the entire document from public access. Instead, the excepted material must be redacted, and the public record portion must be released. *See Outlet Communications*; *State ex rel. National Broadcasting Co. v. City of Cleveland*, 38 Ohio St. 3d 79, 526 N.E.2d 786 (1988); *State ex rel. Dispatch Printing Co. v. Wells*, 18 Ohio St. 3d 382, 481 N.E.2d 632 (1985). A cautionary note, however, must be raised. When the information contained in a record is heavily intertwined with information *solely* concerning the identity of the suspect, the other information may be withheld if a substantial likelihood exists that the identity of the suspect could be inferred from the intertwined information. *McGee*, 49 Ohio St. 3d at 60, 550 N.E.2d at 947.

Another of the enumerated exceptions in R.C. 149.43(A)—"records the release of which is prohibited by state or federal law"—may have limited application to juvenile law enforcement records. For purposes of illustration, I will discuss two such prohibition provisions.

First, R.C. 2151.313(D) restricts the disclosure of juvenile justice records when fingerprints or photographs of a juvenile are taken, by stating:

> No person shall knowingly do any of the following:
>
> (1) Fingerprint or photograph a child in the investigation of any violation of law other than as provided in division (A)(1) or (2) of this section;
>
> (2) Retain fingerprints or photographs of a child obtained or taken under division (A)(1) or (2) of this section, copies of any such fingerprints or photographs, or records of the arrest or custody that was the basis of the taking of such fingerprints or photographs other than in accordance with division (B) of this section;
>
> (3) Use or release fingerprints or photographs of a child obtained or taken under division (A)(1) or (2) of this section, copies of any such fingerprints or photographs, or records of the arrest or custody that was the basis of the taking of any such fingerprints or photographs other than in accordance with division (B) or (C) of this section.

Divisions (A)(1) and (2) of R.C. 2151.313 limit the circumstances in which fingerprints and photographs may be taken to those when a juvenile is arrested or taken into custody for committing an act that would be a felony if committed by an adult and under an order of a juvenile judge granting consent for such procedures. Division (B) limits the period for retention of fingerprints and photographs taken pursuant to R.C. 2151.313 and mandates their destruction by the juvenile court at such time as no complaint is pending against the juvenile.[7] Division (C) precisely delimits the permitted access to and use of fingerprints and photographs of juveniles, and of the records of arrest or custody that form the basis for taking the fingerprints or photographs.

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[7] The mandate of R.C. 2151.313(B) to destroy retained fingerprints and photographs is qualified, however, in cases where the juvenile has been adjudicated delinquent in relation to the act or has been convicted of or pleaded guilty to a criminal offense based on the act subsequent to transfer of the fingerprints and photographs to the juvenile court. In such cases, the maximum length of the additional retention period is the earlier of two years after the date on which the fingerprints or photographs were taken or until the child attains eighteen years of age.

Since exceptions to the Public Records Act must be construed narrowly so that doubt as to the applicability of an exception is resolved in favor of disclosure, *National Broadcasting Co.*, 38 Ohio St. 3d at 83, 526 N.E.2d at 790, R.C. 2151.313 limits access only to those records specifically enumerated. I applied this stricture in Op. No. 87-010 at 2-59, when I stated:

> Because R.C. 2151.313(D)(3) protects from disclosure only fingerprints and photographs, copies of fingerprints and photographs, and "records of [an] arrest or custody that was the basis of the taking of any...fingerprints or photographs," I find that the statute does not forbid the disclosure of records of an arrest or custody that was *not* the basis of the taking of any fingerprints and photographs.
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> ....
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> Of course, if at any time law enforcement officers do take fingerprints and photographs, the custody and disclosure requirements of R.C. 2151.313, governing both the fingerprints and photographs and the records of the arrest or custody that was the basis for the taking of the fingerprints or photographs, would apply.

A second exception incorporated into the Public Records Act is expressly provided by R.C. 2151.358, which permits the juvenile court to issue an order sealing and expunging the records of juvenile offenders. As used in R.C. 2151.358, "seal 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 and that is accessible only to the juvenile court. A record that is sealed shall be destroyed by all persons and governmental bodies except the juvenile court.

R.C. 2151.358(A). Further, R.C. 2151.358(E) also requires the court ordering the record sealed under R.C. 2151.358(C) or (D) to order "that the proceedings in the case...be deemed never to have occurred." "Expungement," as used in R.C. 2151.358, operates to require:

> the appropriate persons and governmental agencies to delete all index references to the case; destroy or delete all court records of the case; destroy all copies of any pictures and fingerprints taken of the person pursuant to the expunged arrest; and destroy, erase, or delete any reference to the arrest that is maintained by the state or any political subdivision of the state, except a record of the arrest that is maintained for compiling statistical data and that does not contain any reference to the person.
>
> ....
>
> After the expungement order has been issued, the court shall, and the person may properly, reply that no record of the case with respect to the person exists.

R.C. 2151.358(F). Upon receipt of a copy of the order to expunge or seal, a public office "shall destroy its record of the prior adjudication or arrest." R.C. 2151.358(G).

The court may order *sua sponte* a particular record sealed or expunged under the circumstances set forth in R.C. 2151.358(C) and R.C. 2151.358(F). Otherwise, R.C. 2151.358 generally requires a person who was brought within the juvenile formal adjudication process to initiate the process by applying to the court for an order sealing or expunging the records that apply to that particular juvenile. R.C. 2151.358(D) ("any person who has been adjudicated...[a] delinquent child may apply to the court for an order to seal his record"); R.C. 2151.358(F) ("[a]ny person who has been arrested and charged with being a delinquent child, and who is adjudicated not guilty of the charges against him in the case or who has the charges against him in the case dismissed, may apply to the court for an expungement of his record in the case").

It is important to note that R.C. 2151.358 does not give the juvenile court unlimited authority over juvenile records maintained by local law enforcement agencies or the county prosecuting attorney. The juvenile court's jurisdiction begins only upon the proper issuance of a valid order sealing or expunging a juvenile's record pursuant to R.C. 2151.358. By the terms of that provision, a juvenile judge may issue an order under R.C. 2151.358 only after the formal adjudication process is completed.

Having outlined various exceptions to the general rule that identifying data and police records about juvenile offenders must be subject to release under R.C. 149.43, I now direct my attention to your second question which asks how a determination that no formal complaint is to be filed against a juvenile offender affects the public access analysis. While your question concentrates on the filing of a formal complaint, *see* R.C. 2151.27, it again deserves mention that few juvenile offenders are subject to the formal adjudication process occasioned by the filing of a formal complaint. The other potential law enforcement actions range from a verbal warning to a referral to the juvenile court for informal processing through the Ohio R. Juv. P. 9 screening procedures.

The filing of the complaint against the juvenile results in the issuance of a citation or a warrant. R.C. 2151.29; R.C. 2151.30; Ohio R. Juv. P. 15. Either citation or warrant serves to notify the juvenile that he is being formally charged with the commission of an act of delinquency. *See* Ohio R. Juv. P. 15; Ohio R. Juv. P. 16. Once such a formal charge has been filed, the confidential law enforcement investigatory record "identity of the subject" exception, R.C. 149.43(A)(2)(a), no longer applies. *Outlet Communications* (syllabus). However, a "prosecutor's decision not to file formal charges against a suspect does not take the record of the investigation outside the exception provided for confidential law enforcement investigatory records in R.C. 149.43(A)(2)," *Thompson Newspapers* (syllabus, paragraph two), and these records are not subject to disclosure under R.C. 149.43.

If no formal complaint, however, is to be brought against a juvenile offender, but some lesser action by a law enforcement agency is taken, a determination must be made whether the juvenile remains a "suspect" for purposes of R.C. 149.43(A)(2). If so, the confidential law enforcement records exception to the Public Records Act applies and those records need not be released.

It is the charging with an offense that is the critical element in a determination that removes a person from the status of "suspect." *Thompson Newspapers*, 47 Ohio St. 3d at 30, 546 N.E.2d at 942 ("in order for law enforcement records to be subject to disclosure we have required some action beyond the investigatory stage where suspects have either been *arrested, cited, or otherwise charged with an offense*" (emphasis added)). "Charging" is the event that takes a suspect beyond the investigation stage which the confidential law enforcement investigatory records exception protects. To this effect, the Ohio Supreme Court specifically found that:

> the statute [R.C. 149.43(A)(2)(a)], by referring to "suspects," was intended to except documents that identified persons who were subject to ongoing investigations as to which *no public action*, such as an arrest or citation, had yet been taken. The term "suspects" clearly implies persons subject to ongoing investigations. One who has been arrested or given a citation, which is in lieu of arrest for a minor misdemeanor in Ohio as provided by statute, is more than just a suspect under investigation, at least for purposes of R.C. 149.43. Within the context of our discussion here, even though a person who has been arrested or given a citation for a traffic violation may subsequently not be prosecuted on such violation, it may be reasonably concluded that such person has been charged.

Outlet Communications, 38 Ohio St. 3d at 328, 528 N.E.2d at 178–79 (emphasis added, footnote omitted). The court pointedly indicated the formality of the "charge" is not the relevant determinant by stating "[a]rrest records and intoxilyzer

records which contain the names of persons who have been *formally charged with an offense, as well as those who have been arrested and/or issued citations but who have not been formally charged*, are not confidential law enforcement investigatory records within the exception of R.C. 149.43(A)(2)(a)." *Id.* at 328, 528 N.E.2d at 178 (emphasis added).

A juvenile who is arrested, cited or otherwise "charged" would no longer be a suspect under the *Outlet Communications* rationale. "Charging" of a juvenile includes any public action by a law enforcement agency where the juvenile is placed on notice that an investigation has been completed to the extent that the juvenile is alleged to have committed a delinquent act. Therefore, a determination that no formal complaint against a juvenile will be filed, is not, in and of itself, determinative of whether the identity of an alleged juvenile offender must be released.

As a final matter, in concluding that, with only limited exceptions, records kept by law enforcement agencies about juvenile offenders are public records, I am acutely aware that an inherent tension is present in the disparate treatment of the same information in the records of law enforcement and juvenile court agencies. The clear statement of legislative intent to "protect the public interest in removing the consequences of criminal behavior and the taint of criminality" from juvenile offenders is apparent by the General Assembly's choice of these precise words in the enactment of R.C. 2151.01. This strong public policy is present throughout R.C. Chapter 2151, particularly as applied to juvenile court proceedings. While the General Assembly and the Ohio Supreme Court have extended confidentiality protections to juveniles who are the subject of the juvenile justice system, *see, e.g.*, R.C. 2151.14; Ohio R. Juv. P. 37(B), the General Assembly has not broadly extended those protections to law enforcement records concerning juvenile offenders. Instead, the legislature has pinpointed several areas of particular concern and enacted specific legislation to address those precise problems. *See, e.g.*, R.C. 2151.313; R.C. 2151.358. No weighing of competing interests is permitted by either the public office involved or a reviewing court, because "in open records cases, the General Assembly has already done the weighing." *State ex rel. Multimedia, Inc. v. Whalen*, 48 Ohio St. 3d 41, 42, 549 N.E.2d 167, 168 (1990). The corollary would, thus, be that if the General Assembly has not addressed an interest by a specific statutory provision, the interest must be inferior to the general right of public access granted by R.C. 149.43. Given the judicial and legislative mandates to treat records of Ohio public offices as open to broad public access with the restriction of that access limited to clear statutory exceptions, *see, e.g., Whalen; State ex rel. National Broadcasting Co*; R.C. 149.43(B), I am compelled to find that, except as directed by specific provision of state or federal law, records of law enforcement agencies concerning juvenile offenders are public records to which the public has a right of access by inspecting and receiving copies upon request pursuant to R.C. 149.43.

Despite the current lack of a comprehensive provision shielding juvenile offenders' law enforcement agency records from relatively open public scrutiny, the General Assembly is, however, not fettered by a constitutional prohibition which forbids restrictions on law enforcement records about juvenile offenders. Recognizing this principle, the Ohio Supreme Court recently reiterated the statement from *In re Gault*, 387 U.S. 1, 25 (1967) that "there is no reason why, consistently with due process, a State cannot continue...to provide and to improve provision for the confidentiality of records...relating to juveniles." *In re T.R.*, 52 Ohio St. 3d at 15, 556 N.E.2d at 449. Because a state may continue to provide and improve provisions for the confidentiality of records relating to juveniles, little, if any, impediment exists to enacting statutory provisions that extend the confidentiality accorded juvenile offenders in juvenile court proceedings to similar or identical information contained in law enforcement agency records. The fact that the General Assembly has not provided for the confidentiality of juvenile law enforcement records, either in the Public Records Act or in a separate statutory exception, reinforces my determination that such records are open to public access.

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

1. Absent an applicable exception in state or federal law, upon the request of any person, local law enforcement agencies and the county prosecutor must release records containing the names of juvenile offenders and other identifying data.

2. To the extent that a specific exception in R.C. 149.43 or an applicable provision of state or federal law prohibits their release, local law enforcement agency records concerning juvenile offenders are not public records under R.C. 149.43 and the public does not have a right to inspect and receive copies of such records under the Public Records Act.

3. If, pursuant to R.C. 2151.313, a law enforcement officer or other authorized person takes fingerprints or photographs of a juvenile arrested or taken into custody, the fingerprints, photographs and other records relating to that arrest or custody of the juvenile are not public records.

4. When a record of the adjudication or arrest of a juvenile has been ordered sealed or expunged pursuant to R.C. 2151.358, such record is not a public record.

5. For purposes of the confidential law enforcement investigatory records exception under R.C. 149.43(A), a juvenile may be considered a "suspect" when no charge, arrest, complaint or referral to the juvenile court pursuant to Ohio R. Juv. P. 9 has been made.

6. For purposes of the confidential law enforcement investigatory records exception under R.C. 149.43(A), a juvenile ceases to be a "suspect" upon arrest, being charged, the filing of a complaint or a referral to the juvenile court pursuant to Ohio R. Juv. P. 9.

7. A decision, at a particular point in time, not to charge, arrest, file a complaint with or refer a juvenile to the juvenile court pursuant to Ohio R. Juv. P. 9 does not require disclosure or terminate the juvenile's status as a "suspect," pursuant to R.C. 149.43(A).

8. Pursuant to Ohio R. Juv. P. 32(B), Ohio R. Juv. P. 37(B) and R.C. 2151.14, juvenile court records, the records of social, mental and physical examinations pursuant to court order, and records of the juvenile court probation department are not public records under R.C. 149.43.