July 10, 2014

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SYLLABUS: 2014-029

1. Whether personal email addresses that are contained in a public record are themselves public records is a fact-specific inquiry that must be determined on a case-by-case basis.

2. Personal email addresses that are contained in an email sent by a township fiscal officer that do not document the organization, functions, policies, decisions, procedures, operations, or other activities of the township do not constitute "records," as defined in R.C. 149.011(G), and are not required to be disclosed by R.C. 149.43.

3. To determine whether personal email addresses document the organization, functions, policies, decisions, procedures, operations, or other activities of the township, the township must determine whether disclosure of the email addresses would facilitate the public's ability to monitor the functions of the township in performing its statutory duties, and whether the township actually used the email addresses in making decisions or in performing its functions.

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OPINION NO. 2014-029

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Dear Law Director Crain:

You have requested an opinion whether the personal email address[1] of a township resident that appears in a public record of the township is itself a public record. You wish to know whether the personal email address may be redacted from the contents of the public record when the public record is made available for inspection and copying or a copy thereof is furnished in response to a public records request submitted under R.C. 149.43.

You explain that in 2013, the West Chester Township fiscal officer sent an email to several hundred people. The email discussed township activities, the conduct of two township trustees, the work of the township's legal counsel, duties of the township fiscal officer, and the township fiscal officer's impressions of the actions of two township trustees and the township's legal counsel. The email referred to an upcoming election for two township trustees.

A person has requested a copy of the email and any responses to the email. You assert that the email sent by the township fiscal officer is a public record.[2] However, you question whether the

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[1] For purposes of this opinion, we understand a personal email address to be an email address that is used in a person's private life for matters unrelated to her professional or occupational activities, and that is not associated with an office, entity, or organization that has a public presence.

[2] In so far as you have concluded that the township fiscal officer's email is a public record, and have not asked us to consider that question, this opinion assumes, without deciding, that the email from the fiscal officer is a public record. We note, however, that the use of a township's email network to send a communication authored by a township's fiscal officer does not compel a finding that the communication is a "record" for purposes of R.C. 149.43. *See, e.g., State ex rel. Wilson-Simmons v. Lake Cnty. Sheriff's Dept.*, 82 Ohio St. 3d 37, 41-42, 1998-Ohio-597, 693 N.E.2d 789 (emails containing allegedly racist remarks, although sent from sheriff's office email accounts, did not constitute "records" under R.C. 149.011(G) because the emails did not "document[] sheriff's department policy or procedures" and were not "used to conduct sheriff's department business").

personal email addresses of the recipients of the email are themselves public records because they may not be a "record," as defined in R.C. 149.011(G), for purposes of R.C. 149.43. The recipients' personal email addresses may be redacted from the email if they are non-record information. This last point is the focus of your inquiry to us.[3]

R.C. 149.43(B) requires a public office to promptly prepare and make available for inspection or copying all public records that are responsive to a person's request. R.C. 149.43(A) defines a "public record" as "records kept by any public office, including, but not limited to, state, county, city, village, township, and school district units, and records pertaining to the delivery of educational services by an alternative school in this state kept by the nonprofit or for-profit entity operating the alternative school pursuant to [R.C. 3313.533]," unless the record is excepted from the definition by R.C. 149.43(A)(1)(a)-(bb). R.C. 149.011(G) states:

> "Records" includes any document, device, or item, regardless of physical form or characteristic, including an electronic record as defined in [R.C. 1306.01], created or received by or coming under the jurisdiction of any public office[4] of the state or its political subdivisions, which serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office. (Footnote added.)

A document, device, or item is not a record for purposes of R.C. Chapter 149 solely based on the fact that it is received by and kept by a public office. *State ex rel. Dispatch Printing Co. v. Johnson*, 106 Ohio St. 3d 160, 2005-Ohio-4384, 833 N.E.2d 274, at ¶29 ("simply because an item is received and kept by a public office does not transform it into a record under R.C. 149.011(G)"). Moreover, "'[i]nformation,' in and of itself, does not constitute a 'record' as defined by R.C. 149.011(G)." 1994 Op. Att'y Gen. No. 94-046, at 2-234. Rather, a "record" for purposes of R.C.

Rather, the purpose of the communication and the character and nature of its content must be known to determine with certainty whether the communication is a "record." *See id.*

[3] Your letter notes that a public records request has been made for the fiscal officer's email and "any follow-up responses[.]" However, you have asked us to address only whether the personal email addresses of the recipients of the email are public records. Accordingly, this opinion does not address whether any responses to the fiscal officer's email are public records.

Additionally, you have stated that West Chester Township has a limited home rule government. As you have not asked, this opinion does not address the effect, if any, that a limited home rule government has on the provisions of R.C. Chapter 149.

[4] For purposes of R.C. Chapter 149, "public office" is defined as including "any state agency, public institution, political subdivision, or other organized body, office, agency, institution, or entity established by the laws of this state for the exercise of any function of government [but] does not include the nonprofit corporation formed under [R.C. 187.01]." R.C. 149.011(A).

Chapter 149, must satisfy three criteria: (1) it must be a document, device, or item, regardless of its form; (2) that is created or received by a public office; and (3) that serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the public office. R.C 149.011(G). To constitute a record, all three elements of R.C. 149.011(G)'s definition must be met. *State ex rel. Dispatch Printing Co. v. Johnson* at ¶19 ("[i]f the Dispatch fails to prove any of these three requirements, it will not be entitled to a writ of mandamus to compel access to the requested state-employee home addresses because those records are not subject to disclosure under the Public Records Act"); *State ex rel. Fant v. Enright*, 66 Ohio St. 3d 186, 188, 1993-Ohio-188, 610 N.E.2d 997 (1993) ("[t]o the extent that any item contained in a personnel file is not a 'record,' *i.e.*, does not serve to document the organization, etc., of the public office, it is not a public record and need not be disclosed"). The public records law "'must be construed liberally in favor of broad access, and any doubt should be resolved in favor of disclosure of public records.'" *State ex rel. Beacon Journal Publ'g Co. v. Bond*, 98 Ohio St. 3d 146, 2002-Ohio-7117, 781 N.E.2d 180, at ¶8 (quoting *State ex rel. Strothers v. Wertheim*, 80 Ohio St. 3d 155, 156, 684 N.E.2d 1239 (1997)).

"If a public record contains information that is exempt from the duty to permit public inspection or to copy the public record, the public office … shall make available all of the information within the public record that is not exempt." R.C. 149.43(B). "A redaction shall be deemed a denial of a request to inspect or copy the redacted information, except if federal or state law authorizes or requires a public office to make the redaction." *Id.*[5] The public office asserting that the information is not required to be disclosed "bears the burden of establishing that the requested information is exempt from disclosure." *State ex rel. Beacon Journal Publ'g Co. v. Bond* at ¶8.

In the situation with which you are concerned, there does not appear to be a question that the personal email addresses of the recipients of the fiscal officer's email meet the first two elements of the definition of record (*i.e.*, the recipients' personal email addresses are devices or items that were received by the township, which is a public office, *see* 2008 Op. Att'y Gen. No. 2008-019, at 2-204 ("[a] township is a political subdivision, and thus is a 'public office' under R.C. 149.011(G)" (citation omitted))). Your inquiry hinges upon the third part of R.C. 149.011(G)'s definition of record: "which serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office." If the personal email addresses do not document the organization, functions, policies, decisions, procedures, operations, or other activities of the township, then the personal email addresses do not constitute "records" for purposes of R.C. 149.43. If the email addresses are not "records," they cannot be considered "public records" and a township is not compelled by R.C. 149.43 to disclose them.

In determining whether a document, device, or item "serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office" for purposes of

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[5] Redaction is defined as "obscuring or deleting any information that is exempt from the duty to permit public inspection or copying from an item that otherwise meets the definition of a 'record' in [R.C. 149.011]." R.C. 149.43(A)(11).

R.C. 149.011(G), Ohio courts have looked to the purpose of the public records law, "'which is to expose government activity to public scrutiny.'" *State ex rel. Dispatch Printing Co. v. Johnson* at ¶27 (quoting *State ex rel. Cincinnati Enquirer v. Winkler*, 101 Ohio St. 3d 382, 2004-Ohio-1581, 805 N.E.2d 1094, at ¶5; *State ex rel. WHIO-TV-7 v. Lowe*, 77 Ohio St. 3d 350, 355, 673 N.E.2d 1360 (1997)). When documents, devices, or items that are created by or received by a public office do little to expose the workings of the public office to public scrutiny, courts have concluded that the documents, devices, or items do not constitute "records" for purposes of R.C. 149.011(G) and R.C. 149.43. *State ex rel. Dispatch Printing Co. v. Johnson* at ¶52; *State ex rel. Beacon Journal Publ'g Co. v. Bond*, 98 Ohio St. 3d at ¶11-13; *State ex rel. McCleary v. Roberts*, 88 Ohio St. 3d 365, 368-70, 2000-Ohio-345, 725 N.E.2d 1144 (2000); *Miami Valley Child Dev. Ctrs., Inc. v. Dist. 925/Serv. Emps. Int'l Union/AFL-CIOM, CLC*, 2d Dist. No. 18928, 2002-Ohio-933, 2002 WL 253637, at *10; *State ex rel. Jones v. Summit Cnty. Children Servs. Bd.*, 9th Dist. No. 19915, 2001 WL 96048, at *4 (Jan. 24, 2001); *see, e.g., State ex rel. O'Shea & Assocs. Co., L.P.A. v. Cuyahoga Metro. Housing Auth.*, 131 Ohio St. 3d 149, 2012-Ohio-115, 962 N.E.2d 297, at ¶24, 34-36 (home addresses contained in completed lead-poisoning questionnaires and medical-release authorizations of the Cuyahoga Metropolitan Housing Authority (CMHA) are "public records" in so far as they "help the public monitor CMHA's compliance with its statutory duty to provide safe housing"); *State ex rel. Harper v. Muskingum Watershed Conservancy Dist.*, 5th Dist. No. 2013 AP 06 0024, 2014-Ohio-1222, 2014 WL 1350915, at ¶8-12 (billing addresses document the agency's billing practices and are "public records").

In *McCleary*, the Ohio Supreme Court considered whether "the names, home addresses, family information, emergency contact information, and medical history information" of children participating in a photo identification program required by the city's Parks and Recreation Department constituted "records" for purposes of R.C. 149.011(G) and R.C. 149.43. *State ex rel. McCleary v. Roberts*, 88 Ohio St. 3d at 365-66. The court noted that the information, in and of itself, did "nothing to document any aspect of the City's Recreation and Parks Department." *Id.* at 368. Consequently, the information did not constitute "records" for purposes of R.C. 149.011(G) and R.C. 149.43. *Id.* at 367, 370. The court held that "personal information of private citizens, obtained by a 'public office,' reduced to writing and placed in record form and used by the public office in implementing some lawful, regulatory policy is not a 'public record' as contemplated by R.C. 149.43." *Id.*

Similarly, in *Bond*, the Ohio Supreme Court, relying on its analysis and reasoning in *McCleary*, concluded that information obtained by a public office that "does little to ensure the accountability of government or shed light on the [public office's] performance of its statutory duties" does not constitute "records" for purposes of R.C. 149.011(G) and R.C. 149.43. *State ex rel. Beacon Journal Publ'g Co. v. Bond* at ¶11-13. The court further concluded that "disclosure of information about private citizens is not required when such information '"reveals little or nothing about an agency's own conduct"' and 'would do nothing to further the purposes of the Act.'" *Id.* at ¶11 (quoting *State ex rel. McCleary v. Roberts*, 88 Ohio St. 3d at 368 and 369). At issue in *Bond* was a request for the list of names and addresses and completed jury questionnaires of jurors in a criminal case. *State ex rel. Beacon Journal Publ'g Co. v. Bond* at ¶1. The court recognized that the trial court did not use the jurors' responses to the questionnaire, names, and addresses in performing its statutory duties (*i.e.*, rendering a decision in the case), but instead "collected the questionnaires for the benefit of

litigants in selecting an impartial jury and maintained the jurors' names and addresses for the administrative purpose of identifying and contacting individual jurors." *Id.* at ¶12. In this regard, the jurors' responses, names and addresses did not constitute "records" and were not "public records" under R.C. 149.43. *Id.* at ¶13. However, in so far as the questions on the questionnaires were written or approved by the trial court, the questionnaires, without the jurors' responses, served to document the activities of the trial court and were "records" as defined in R.C. 149.011(G). *Id.*

In *Johnson*, the Ohio Supreme Court considered whether state-employee home addresses contained in a database of payroll records maintained by the Ohio Department of Administrative Services were "public records." *State ex rel. Dispatch Printing Co. v. Johnson* at ¶1-2. The court held that "in general, state-employee home addresses are not 'records' under R.C. 149.011(G) and [R.C.] 149.43 because they do not document the organization, functions, policies, decisions, procedures, operations, or other activities of the state and its agencies." *State ex rel. Dispatch Printing Co. v. Johnson* at ¶1. In order for the state-employee home addresses to satisfy the third part of R.C. 149.011(G), the court explained that the addresses would have to "create a written record of the structure, duties, general management principles, agency determinations, specific methods, processes, or other acts of the state agencies." *Id.* at ¶22.

The court in *Johnson* considered evidence that the employees' home addresses were obtained pursuant to a request from the state agencies and were used by the agencies to send correspondence and paychecks to the employees. *Id.* at ¶23. Evidence also showed that the state agencies provided records containing the home addresses to labor unions or health insurance companies. *Id.* Additionally, the home addresses were present on paychecks, various personnel forms, and W-2 forms. *Id.* However, the evidence was not sufficient to demonstrate that the home addresses satisfied the third part of R.C. 149.011(G)'s definition. *Id.* at ¶25. The court stated, "[a]t best, home addresses represent contact information used as a matter of administrative convenience." *Id.*; *accord State ex rel. DeGroot v. Tilsley*, 128 Ohio St. 3d 311, 2011-Ohio-231, 943 N.E.2d 1018, at ¶2, 8 (home addresses of members of the Cincinnati Retirement System "are, at best, contact information used for administrative purposes and reveal nothing about the city or its retirement system"). Under those circumstances, disclosing the home addresses would not facilitate the public's ability to monitor the functions of state government.[6] *State ex rel. Dispatch Printing Co. v. Johnson* at ¶27. The court held "the requested state-employee home addresses do not serve to document the organization, functions, policies, decisions, procedures, operations, or other activities of the state agencies, and their release would not reveal anything to shed light on the conduct of state government." *Id.* at ¶52.

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[6] The court noted two examples of situations in which the home address of a state employee would serve to document the activities or decisions of a public office as required by R.C. 149.011(G). *State ex rel. Dispatch Printing Co. v. Johnson*, 106 Ohio St. 3d 160, 2005-Ohio-4384, 833 N.E.2d 274, at ¶39. An employee's home address, or a portion thereof, may constitute a "record" under R.C. 149.011(G) if, as a condition of employment, an employee must reside within a certain geographic area or "when the public employee's work address is also that employee's home address." *Id.*

Ohio courts have also concluded that documents, devices, or items that are created or received by a public office and actually used by that office to perform its statutory duties and functions constitute "records" for purposes of R.C. 149.011(G) and R.C. 149.43. *State ex rel. Cincinnati Enquirer v. Ronan*, 127 Ohio St.3d 236, 2010-Ohio-5680, 938 N.E.2d 347, at ¶16; *State ex rel. Beacon Journal Publ'g. Co. v. Whitmore*, 83 Ohio St. 3d 61, 63, 1998-Ohio-180, 697 N.E.2d 640 (1998); *State ex rel. Rhodes v. Chillicothe*, 4th Dist. No. 12CA3333, 2013-Ohio-1858, 2013 WL 1907504, at ¶36; *State ex rel. Bowman v. Jackson City School Dist.*, 4th Dist. No. 10CA3, 2011-Ohio-2228, 2011 WL 1770890, at ¶15.

In *Whitmore*, the Ohio Supreme Court considered whether letters received by a trial court judge concerning the sentencing of a defendant in a criminal case could be disclosed pursuant to a public records request. *State ex rel. Beacon Journal Publ'g. Co. v. Whitmore*, 83 Ohio St. 3d at 61-63. The court reasoned that even though the letters were received by the judge and placed in her files, because she did not rely upon or use the letters in making her sentencing decision, the letters did not constitute "records" for purposes of R.C. 149.011(G) and R.C.149.43. *Id.* at 63. The court stated, "R.C. 149.43 and R.C. 149.011(G) do not define 'public record' as any piece of paper received by a public office that *might* be used by that office." *Id.* at 64. Rather, the public office must actually use the information or document in performing its responsibilities or duties. *Id.* at 63.

In *Ronan*, the Ohio Supreme Court applied its holding in *Whitmore* and concluded that documents submitted by applicants for the position of superintendent of the Cincinnati Public Schools were not "records" at the time of the public records request because the school district had not yet retrieved the documents from its post office box. *State ex rel. Cincinnati Enquirer v. Ronan* at ¶15-16. The court emphasized "the mere receipt by the school district of resumes and other materials sent by applicants … did not make these documents records for purpose of R.C. 149.43." *Id.* at ¶15. To constitute "records" the school district must have reviewed, used, or relied upon the documents. *Id.* at ¶16 ("until the school district retrieved the documents from its post office box and reviewed them or otherwise used or relied on them, they were not records subject to disclosure under R.C. 149.43, and the Enquirer was not entitled to them"); *see State ex rel. Bowman v. Jackson City School Dist.* at ¶2, 15 (emails addressing personal subjects that were sent by a teacher on a school district's email system constituted public records "because the superintendent relied upon the emails in reaching his decision to discipline" the teacher).

A document or information that is used for personal convenience, rather than an official purpose, does not constitute a "record" as defined in R.C. 149.011(G). *Compare State ex rel. Doe v. Tetrault*, 12th Dist. No. CA2011-10-070, 2012-Ohio-3879, 2012 WL 3641634, at ¶35-38 (without "evidence that the notes were kept as official records or that other Pierce Township officials had access to or used the notes[,]" the scrap paper used to assist a township employee in recalling his hours worked did not document the functions or activities of the township and did not constitute a "record" as defined in R.C. 149.011(G)), *and Int'l Union, United Auto., Aerospace & Agric. Implement Workers of Am. v. Voinovich*, 100 Ohio App. 3d 372, 377-78, 654 N.E.2d 139 (Franklin County 1995) (Governor's personal calendars maintained for his own personal convenience, and not accessed or used by other members of the office for any official purpose, did not satisfy the definition of "records" in R.C. 149.011(G)), *with State ex rel. McCaffrey v. Mahoning*

Cnty. Prosecutor's Office, 133 Ohio St. 3d 139, 976 N.E.2d 877, 2012-Ohio-4246, at ¶33 (work-related entries in personal calendars constitute records for purposes of R.C. 149.011(G) and R.C. 149.43).

In a prior opinion, the Attorney General was asked to determine whether R.C. 149.43 required disclosure of the names and addresses of customers of a county sewer district created under R.C. Chapter 6117. 2002 Op. Att'y Gen. No. 2002-030, at 2-199. The opinion applied an analysis consistent with the cases discussed above. *Id.* at 2-201 to 2-203. The opinion reasoned that a board of county commissioners has several duties with respect to the operation of a county sewer district, including setting rates for the use of the drainage and sanitary facilities of the district and collecting the charges for such use. *Id.* at 2-202. A board of county commissioners would not be able to perform its duties with respect to the operation of a county sewer district unless it maintained a list of the names and addresses of the property owners within the district. *Id.* Accordingly, the names and addresses of customers "serve to document the services provided by, as well as the functions, operations, and activities of the county sewer district" and "are actually used by the district in the execution of its functions." *Id.* Upon concluding that the names and addresses constituted "records" for purposes of R.C. 149.43, the opinion advised that the names and addresses were "public records" unless an exception applied. *Id.* at 2-202 to 2-203.

It is evident from the foregoing authorities that the determination of whether a personal email address that is contained in a public record is itself a public record is a fact-specific inquiry that must be determined on a case-by-case basis. To determine whether a personal email address is a public record, the township must first determine whether the email address is a "record," as that term is defined in R.C. 149.011(G). Personal email addresses that do not document the organization, functions, policies, decisions, procedures, operations, or other activities of the township are not "records," as defined in R.C. 149.011(G), and are not required to be disclosed by R.C. 149.43(B).[7] It is important to note that when information is not a "record," as defined in R.C. 149.011(G), the public office's release of the information is discretionary, unless some other provision of law prohibits disclosure. 2000 Op. Att'y Gen. No. 2000-021, at 2-135 to 2-136 ("R.C. 149.43 does not expressly

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[7] The provisions of R.C. Chapter 1347, which govern personal information systems, do not restrict the application of R.C. 149.43. R.C. 149.43(D) ("[R.C. Chapter 1347] does not limit the provisions of [R.C. 149.43]"); R.C. 1347.04(B) ("[t]he provisions of [R.C. Chapter 1347] shall not be construed to prohibit the release of public records, or the disclosure of personal information in public records, as defined in [R.C. 149.43]"). However, if R.C. 149.43 does not mandate disclosure of the information because the information is not a public record, R.C. 1347.05(G) may impose a duty upon a public office to prevent disclosure of the information if the information meets the definition of "personal information" set forth in R.C. 1347.01(E). *State ex rel. Fant v. Enright*, 66 Ohio St. 3d 186, 188, 1993-Ohio-188, 610 N.E.2d 997 (1993); *accord State ex rel. McCleary v. Roberts*, 88 Ohio St. 3d 365, 367, 2000-Ohio-345, 725 N.E.2d 1144 (2000); *State ex rel. Dispatch Printing Co. v. Wells*, 18 Ohio St. 3d 382, 385, 481 N.E.2d 632 (1985).

prohibit the disclosure of items that are excluded from the definition of public record, but merely provides that their disclosure is not mandated").

If, however, a personal email address is a "record," as defined in R.C. 149.011(G), the township must then determine whether the email address is a "public record," as defined in R.C. 149.43(A). This determination involves ascertaining whether one of the exceptions identified in R.C. 149.43(A) applies to the email address, thereby excluding it from the disclosure requirements of R.C. 149.43(B).[8] If no exception under R.C. 149.43(A) applies to the email addresses, the township is required to disclose the email addresses as public records.

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[8] In your letter, you assert that even if the recipients' personal email addresses are deemed "records" for purposes of R.C. 149.43, they may still be redacted from the fiscal officer's email on the basis of the recipients' constitutionally protected right to privacy. Information that is protected by a constitutional right of privacy falls within R.C. 149.43(A)(1)(v)'s exception to the definition of a "public record" -- "[r]ecords the release of which is prohibited by state or federal law[.]" 2004 Op. Att'y Gen. No. 2004-045, at 2-391.

"[T]he fact that information is personal in nature (*e.g.*, names and addresses) is not, in itself, determinative of whether the information is or is not a public record." 2004 Op. Att'y Gen. No. 2004-045, at 2-388. To determine whether disclosure of the recipients' personal email addresses would violate the recipients' federal constitutional right to privacy, and therefore exclude the email addresses from the definition of "public record" under R.C. 149.43(A)(1)(v), a two-step test must be applied. *State ex rel. Beacon Journal Publ'g Co. v. Akron*, 70 Ohio St. 3d 605, 608, 1994-Ohio-6, 640 N.E.2d 164 (1994); *accord* 2004 Op. Att'y Gen. No. 2004-045, at 2-393. The first step asks whether individuals have a "legitimate expectation of privacy" in the email addresses. *State ex rel. Beacon Journal Publ'g Co. v. Akron*, 70 Ohio St. 3d at 608; *accord* 2004 Op. Att'y Gen. No. 2004-045, at 2-393. The second step asks whether "[the recipients'] privacy interests outweigh those interests benefited by disclosure of the [email addresses]." *State ex rel. Beacon Journal Publ'g Co. v. Akron*, 70 Ohio St. 3d at 608; *accord* 2004 Op. Att'y Gen. No. 2004-045, at 2-393. Application of this test involves factual determinations that are beyond the scope of an Attorney General opinion. *See* 2011 Op. Att'y Gen. No. 2011-010, at 2-81; 1983 Op. Att'y Gen. No. 83-057, at 2-232 ("[t]his office is not equipped to serve as a fact-finding body").

We do note, however, that courts have recognized a constitutionally protected right to privacy for certain types of information in limited situations. *See, e.g.*, *State ex rel. McCleary v. Roberts*, 88 Ohio St. 3d at 370-72 (personal information about children participating in a city parks and recreation department's photo identification program is protected by right to privacy); *State ex rel. Keller v. Cox*, 85 Ohio St. 3d 279, 282, 1999-Ohio-264, 707 N.E.2d 931 (1999) (personal information relating to police officers and their families is protected by constitutional right to privacy); *State ex rel. Beacon Journal Publ'g Co. v. Akron*, 70 Ohio St. 3d at 612 (Social Security numbers of city's employees are protected by the federal constitution in the face of a public records request). In those cases, in addition to the personal nature of the information requested, there were other factors at play. In *McCleary*,

We cannot advise you whether the personal email addresses of the recipients of the township fiscal officer's email serve to document the organization, functions, policies, decisions, procedures, operations, or other activities of West Chester Township. Resolution of that question involves factual findings that are beyond the scope of an Attorney General opinion; determinations of facts and their meanings must be made by local officials or the courts. *See* 2011 Op. Att'y Gen. No. 2011-010, at 2-81; 1983 Op. Att'y Gen. No. 83-057, at 2-232. In order to determine whether the recipients' personal email addresses are "records," as defined in R.C. 149.011(G), the township should consider whether releasing the addresses will facilitate the public's ability to monitor official functions of the township and whether those addresses are used by the township in the performance of its governmental functions. Factors relevant to this determination include whether the township fiscal officer's email was sent as part of his official duties or responsibilities, whether a township resolution required the township or its fiscal officer to send such an email,[9] whether the recipients are constituents of the township, whether the recipients' email addresses are maintained in a database of the township, and whether the recipients provided their email addresses to the township for the purpose of receiving an email that is sent by the township as part of its official activities. Affirmative responses to some or all these queries may lead the township to conclude that the personal email addresses were used in the

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sensitive to the fact that the information related to children, the court was concerned that releasing the requested information "places those who are the subject of the records request at risk of irreparable harm[.]" *State ex rel. McCleary v. Roberts*, 88 Ohio St. 3d at 371. In *Keller*, the court recognized that the requested information about a police officer and his family may be used by a criminal defendant "to achieve nefarious ends." *State ex rel. Keller v. Cox*, 85 Ohio St. 3d at 282. Similarly, in *Akron*, the court cautioned that "a person's [Social Security number] is a device which can quickly be used by the unscrupulous to acquire a tremendous amount of information about a person." *State ex rel. Beacon Journal Publ'g Co. v. Akron*, 70 Ohio St. 3d at 611.

We discern a distinction between an email address a person provides voluntarily to enable communications to him and the types of information protected in *McCleary*, *Keller*, and *Akron*. *See, e.g.*, *O'Neal v. Emery Fed. Credit Union*, No. 1:13-cv-022, 2014 WL 842948, at *6-7 (S.D. Ohio Mar. 4, 2014) (email addresses of former employees may be provided to plaintiff for the purpose of providing notice); *Breaking Glass Pictures v. Does 1-99*, No. 1:13 CV 802, 2013 WL 5308720, at *1-2 (N.D. Ohio Sept. 19, 2013) (court rejected notion that Internet service subscribers have "'reasonable expectation of privacy in their subscriber information[,]'" which includes their email addresses); *State ex rel. Thomas v. Ohio State Univ.*, 71 Ohio St. 3d 245, 248, 1994-Ohio-261, 643 N.E.2d 126 (1994) (recognizing circumstantial differences between Social Security numbers and the names and work addresses of animal research scientists).

[9] Communication with the constituents of a public office about the public office's official functions and activities is a proper function of government. 1999 Op. Att'y Gen. No. 99-030, at 2-202 n.5; *see* R.C. 9.03(B) (authorizing a political subdivision to expend public funds for the purpose of communicating information regarding the activities of the political subdivision to the public, except as prohibited by R.C. 9.03(C)); 2002 Op. Att'y Gen. No. 2002-001, at 2-2.

performance of township functions and that disclosing the personal email addresses will facilitate the public's ability to monitor those functions. However, if the township fiscal officer's email was sent to the recipients for a reason unrelated to the performance of his responsibilities as a township officer, the township may conclude that the personal email addresses were not used by the township in the performance of its functions and disclosure of the email addresses will shed little light on the functions and activities of the township. In that situation, the personal email addresses will not serve to document the organization, functions, policies, decisions, procedures, operations, or other activities of the township and will not come within the definition of "records" set forth in R.C. 149.011(G).

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

1. Whether personal email addresses that are contained in a public record are themselves public records is a fact-specific inquiry that must be determined on a case-by-case basis.

2. Personal email addresses that are contained in an email sent by a township fiscal officer that do not document the organization, functions, policies, decisions, procedures, operations, or other activities of the township do not constitute "records," as defined in R.C. 149.011(G), and are not required to be disclosed by R.C. 149.43.

3. To determine whether personal email addresses document the organization, functions, policies, decisions, procedures, operations, or other activities of the township, the township must determine whether disclosure of the email addresses would facilitate the public's ability to monitor the functions of the township in performing its statutory duties, and whether the township actually used the email addresses in making decisions or in performing its functions.

Very respectfully yours,

MICHAEL DEWINE
Ohio Attorney General