

OPINION NO. 2005-047

Syllabus:

1. Because individuals possess a constitutionally protected privacy right in their social security numbers, such numbers when contained

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in a court's civil case files are not public records for purposes of R.C. 149.43.

2. Prior to releasing information from a court's civil case files, the clerk of court has a duty to redact social security numbers included in those files.
3. An individual's personal financial information contained in a court's civil case files is a public record for purposes of R.C. 149.43, unless the information is not a "record" of the court or the information falls within one of the exceptions to the definition of the term "public record" set forth in R.C. 149.43(A)(1).

To: James J. Mayer, Jr., Richland County Prosecuting Attorney, Mansfield, Ohio

By: Jim Petro, Attorney General, December 21, 2005

You have submitted an opinion request in which you ask whether a clerk of court has a duty to redact personal information contained in printed material, microfiche, or microfilm in the custody of the clerk's office for purposes of the court's civil cases. A member of your staff has informed us that you are aware of 2004 Op. Att'y Gen. No. 2004-045, which addressed a court's duties with respect to the handling of personal information contained in a court's criminal case files, and that you wish to know whether the analysis and conclusions set forth in that opinion apply equally to personal information kept by a clerk of court in the court's civil case files.¹

Let us begin with a brief summary of 2004 Op. Att'y Gen. No. 2004-045,

¹ 2004 Op. Att'y Gen. No. 2004-045 concluded, in pertinent part, in the syllabus:

1. Information of a personal nature contained in a court's criminal case files is a public record for purposes of R.C. 149.43, unless the information is not a "record" of that office or the information falls within one of the exceptions to the definition of the term "public record" set forth in R.C. 149.43(A)(1)(a)-(x).

2. Because individuals possess a constitutionally protected privacy right in their social security numbers, such numbers when contained in a court's criminal case files are not public records for purposes of R.C. 149.43.

3. Prior to releasing any information in its possession, a court has a duty to redact any information about an individual the release of which would violate the individual's constitutionally protected right of privacy and any information that is made confidential by law.

4. Whether information of a personal nature contained in a court's criminal case files is accessible to the public does not depend solely upon the terms of R.C. 149.43, but also depends upon whether the public pos-

which examined whether certain types of personal information contained in a court's criminal case files, such as a defendant's social security number and date of birth, the names and addresses of adults and children who are victims of crime, and banking information of victims of certain crimes, are public records for purposes of R.C. 149.43. The 2004 opinion began by noting that the classification of information as "personal information" is not, in itself, determinative of whether the information is or is not a public record. "Rather, in those instances in which the Ohio Supreme Court has found personal information held by a public office, including a court, not to be 'public records' for purposes of R.C. 149.43,"² it has found either (1) that the personal information was not a 'record' of the public office for purposes of

sesses a constitutional right of access to the criminal proceedings. In proceedings to which the public possesses such right, public access to the proceedings and the information from such proceedings may be restricted, but only in order to preserve higher values, and any such restriction must be narrowly tailored to protect those higher values and to accommodate the public's right of access.

5. A court must redact information maintained in an electronic format to the same extent that it must redact information it maintains in any other medium.

We note that, after the issuance of the 2004 opinion, the General Assembly added an additional exception to the definition of the term "public record" for financial or personally identifying information submitted in certain circumstances to the Ohio Housing Finance Agency or to the Controlling Board. R.C. 149.43(A)(1)(y) (Am. Sub. H.B. 431, 126th Ohio Gen. A. (2005) (eff. July 1, 2005)).

² R.C. 149.43(B) states, in pertinent part:

(1) Subject to division (B)(4) of this section [(limiting the duty of a public office to provide certain public records to incarcerated individuals)], all public records shall be promptly prepared and made available for inspection to any person at all reasonable times during regular business hours. Subject to division (B)(4) of this section, upon request, a public office or 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, public offices shall maintain public records in a manner that they can be made available for inspection in accordance with this division.

See generally R.C. 149.43(A)(1) (defining the term "public record," as meaning, in part, "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 Ohio kept by a nonprofit or for profit entity operating such alternative school pursuant to [R.C. 3313.533]"); R.C. 149.011(G) (defining "records" as including "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

R.C. 149.43 and thus could not be a 'public record' of that office, or (2) that the personal information fit within one of the statutory exceptions to the definition of 'public record.'" 2004 Op. Att'y Gen. No. 2004-045 at 2-388.

In addressing your concern as to a clerk of court's duties regarding personal information contained in a court's civil case files, we begin by noting that just as R.C. 149.43 applies to a court's criminal case files, it also applies to a court's civil case files.³ See, e.g., *State ex rel. Highlander v. Rudduck*, 103 Ohio St. 3d 370, 2004-Ohio-4952, 816 N.E.2d 213 (2004) (applying R.C. 149.43 to a court's divorce records); *State ex rel. WBNS TV, Inc. v. Dues*, 101 Ohio St. 3d 406, 2004-Ohio-1497, 805 N.E.2d 1116 (2004) (probate court records); *Adams v. Metallica, Inc.*, 143 Ohio App. 3d 482, 758 N.E.2d 286 (Hamilton County 2001) (civil discovery materials filed with a court). Thus, the decision whether the public possesses a right of access under R.C. 149.43 to personal information in a court's case files is subject to the same analytical framework whether the case is a civil or criminal matter, i.e., personal information contained in a court's civil case files is a "public record," unless the information is not a "record" of that office or the information falls within one of the exceptions to the definition of the term "public record" set forth in R.C. 149.43(A)(1)(a)-(y). See, e.g., *State ex rel. Miami Valley Broadcasting Corp. v. Davis*, 158 Ohio App. 3d 98, 2004-Ohio-3860, 814 N.E.2d 88 (Montgomery County 2004) (discussing the application of R.C. 149.43 to records of a court, and finding that pleadings in a court's civil case file are public records for purposes of R.C. 149.43).

As explained in 2004 Op. Att'y Gen. No. 2004-045, the Ohio Supreme Court has determined that certain personal information held by a public office is not a "record" of that office, and thus not a "public record" of that office for purposes of R.C. 149.43. See, e.g., *State ex rel. McCleary v. Roberts*, 88 Ohio St. 3d 365, 725 N.E.2d 1144 (2000) (finding that names and addresses of children collected for a city's photo identification program are not records of the city and thus are not public records of the city). Indeed, in *State ex rel. Beacon Journal Publishing Co. v. Bond*, 98 Ohio St. 3d 146, 2002-Ohio-7117, 781 N.E.2d 180 (2002), the court concluded specifically that certain personal juror information in the court's possession, i.e., names and addresses and responses to juror questionnaires, is not a record of the court and, therefore, is not a public record of the court. In both instances, the court determined that, "disclosure of information about private citizens is not required

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").

³ As discussed in 2004 Op. Att'y Gen. No. 2004-045, properly sealed court records are not "public records" for purposes of R.C. 149.43 because they fall within the exception established by R.C. 149.43(A)(1)(v). See *State ex rel. Cincinnati Enquirer v. Winkler*, 101 Ohio St. 3d 382, 2004-Ohio-1581, 805 N.E.2d 1094 (2004), at ¶6 ("once the court records were sealed under R.C. 2953.52, they ceased to be public records"). We assume your questions concern personal information contained in a court's civil case files that have not been properly sealed.

when such information “‘reveals little or nothing about an agency’s own conduct’” and ‘would do nothing to further the purposes of the [Public Records] Act.’ [*McCleary v. Roberts*], 88 Ohio St.3d at 368 and 369, 725 N.E.2d 1144, quoting *United States Dept. of Justice v. Reporters Commt. for Freedom of the Press* (1989), 489 U.S. 749, 780, 109 S.Ct. 1468, 103 L.Ed.2d 774.” *State ex rel. Beacon Journal Publishing Co. v. Bond*, at ¶11.⁴ Although the application of both *McCleary* and *Bond* outside the specific situations presented by those cases is unclear, the underlying conclusion that information that is not a “record” of a public office, including a court, cannot be a “public record” of such office for purposes of R.C. 149.43 applies to information held by a court not only in its criminal case files, but in its civil case files as well.

The other basis upon which the Ohio Supreme Court has found certain personal information in the possession of a public office not to constitute a “public record” of the office lies in R.C. 149.43(A)(1)(v), which creates an exception for “records the release of which is prohibited by state or federal law.” As explained by the court in *State ex rel. Beacon Journal Publ’g Co. v. City of Akron*, 70 Ohio St. 3d 605, 608, 640 N.E.2d 164 (1994), “there is a federal right to privacy which

⁴ Despite its determination that juror names, addresses, and questionnaire responses were not “public records” for purposes of R.C. 149.43, the court in *State ex rel. Beacon Journal Publishing Co. v. Bond*, 98 Ohio St. 3d 146, 2002-Ohio-7117, 781 N.E.2d 180 (2002), ¶17, found that the public’s First Amendment right of access to criminal proceedings required the disclosure of juror names and addresses unless the court determines that the public’s right of access is outweighed “‘by an overriding interest based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest,’” (quoting *Press-Enterprise Co. v. Superior Court*, 464 U.S. 501, 510 (1984)). After finding that the jurors’ privacy interests, in the circumstances of that case, were insufficient to overcome the presumption of openness to the voir dire process, the *Bond* court stated further at ¶25:

[W]e acknowledge that certain questions will invariably elicit personal information that is relevant only to juror identification and qualification rather than for the selection of an impartial jury. Accordingly, these questions—such as those that elicit Social Security number, telephone number, and driver’s license number—are not properly part of the voir dire process and *should be redacted from the questionnaires prior to disclosure*. Indeed, such information does nothing to further the objectives underlying the presumption of openness—namely, the enhancement and appearance of basic fairness in the criminal trial. In recognizing these per se exemptions, however, we limit our holding to questions that elicit information used for juror identification and qualification; to extend our holding to information that may be used in determining the impartiality of jurors would suppress information protected by the First Amendment. (Emphasis added; footnote omitted.)

protects against governmental disclosure of the private details of one's life." The *City of Akron* court cited the following two factors as creating the employees' privacy interest in their social security numbers: (1) the federal legislative scheme governing the use of social security numbers gives the employees a legitimate expectation of privacy in those numbers, and (2) the high potential for fraud and victimization caused by the disclosure of such numbers outweighs the minimal information about the workings of government that would be disclosed by the release of the numbers. Accordingly, the *City of Akron* court concluded that, "the United States Constitution forbids disclosure under the circumstances of this case. Therefore, reconciling federal constitutional law with Ohio's Public Records Act, we conclude that R.C. 149.43 does not mandate that the city of Akron disclose the SSNs of all of its employees upon demand." 70 Ohio St. 3d at 612.⁵

The *City of Akron* court found that, in the circumstances of that case, city employees possessed a constitutionally protected privacy interest in their social security numbers contained in the city's payroll files. The courts have found, however, that a right of privacy in one's social security number exists in other situations as well. See, e.g., *State ex rel. Highlander v. Rudduck*, at ¶25 (concluding that, because the divorce records in that case had not been properly sealed, the clerk had a duty to disclose such records after the judge has made "any appropriate redactions, e.g., Social Security numbers"); *State ex rel. WLWT-TV5 v. Leis*, 77 Ohio St. 3d 357, 361, 673 N.E.2d 1365 (1997) (stating that social security numbers contained in the investigatory files of a county sheriff or prosecuting attorney "are exempt under R.C. 149.43(A)(1) and the federal constitutional right to privacy"); *Bardes v. Todd*, 139 Ohio App. 3d 938, 944, 746 N.E.2d 229 (Hamilton County 2000) (concerning a court's release of information contained in its divorce records, the court stated, "Social Security numbers are exempt from the Public Records Act under R.C. 149.43(A)(1) and subject to the federal constitutional right to privacy").

You have specifically asked about the disclosure of social security numbers that are included in a court's civil case files. Based upon *State ex rel. Highlander v. Rudduck* and *Bardes v. Todd*, we conclude that, a social security number contained in a court's civil case files does not constitute a "public record" for purposes of R.C. 149.43.

It is our understanding that you have an additional question regarding the disclosure of social security numbers in a court's case files, based upon the syllabus of 1996 Op. Att'y Gen. No. 96-034, which states:

The decision of the Ohio Supreme Court in *State ex rel. Beacon Journal Publ. Co. v. City of Akron*, 70 Ohio St. 3d 605, 640 N.E.2d 164

⁵ In *State ex rel. Keller v. Cox*, 85 Ohio St. 3d 279, 282, 707 N.E.2d 931 (1999), the Ohio Supreme Court found that certain personal information contained in police officers' personnel files, i.e., "the names of the officers' children, spouses, parents, home addresses, telephone numbers, beneficiaries, medical information, and the like," are protected by the officers' constitutional right of privacy and are not "public records" for purposes of R.C. 149.43.

(1994),⁶ does not impose an obligation upon a county recorder to remove or obliterate social security account numbers that appear on mortgages, mortgage releases, veterans discharges, and financing statements before he records those instruments. (Footnote added.)

Based upon this conclusion, the clerk of court questions whether she has a duty to redact social security numbers from the court's civil case files prior to their disclosure to the public.

In explaining why the decision in *City of Akron* did not require a county recorder to redact social security numbers from documents prior to recording such instruments, 1996 Op. Att'y Gen. No. 96-034 began by noting that the holding in *City of Akron* was limited to the circumstances of that case, *i.e.*, the disclosure of city employees' social security numbers contained within the city's payroll records. The 1996 opinion explained that the manner in which social security numbers come into the possession of a county recorder, *i.e.*, contained on documents the recorder copies to provide public notice of various matters contained in such documents, differs substantially from that in the *City of Akron* case. In that case, the city required its employees to furnish their social security numbers in order for the city to carry out its "responsibilities under the wage withholding provisions of the Social Security Act." 1996 Op. Att'y Gen. No. 96-034 at 2-134. Given the varying purposes for which the information was submitted to the public offices, the 1996 opinion questioned whether those submitting documents for recording by a county recorder would possess the same expectation of privacy in social security numbers appearing on those documents as had the city employees in *City of Akron*, a critical element in finding the latter to possess a constitutionally protected right of privacy in such numbers. In this regard, 1996 Op. Att'y Gen. No. 96-034 referred to the decision in *State ex rel. Cincinnati Enquirer v. Hamilton County*, 75 Ohio St. 3d 374, 662 N.E.2d 334 (1996), as suggesting that one's expectation of privacy in one's social security number may vary depending upon the circumstances in which it is furnished

⁶ The court in *State ex rel. Beacon Journal Publ'g Co. v. City of Akron*, 70 Ohio St. 3d 605, 612, 640 N.E.2d 164 (1994), concluded, as follows:

We find today that the high potential for fraud and victimization caused by the unchecked release of city employee SSNs outweighs the minimal information about governmental processes gained through the release of the SSNs. Our holding is not intended to interfere with meritorious investigations conducted by the press, but instead is intended to preserve one of the fundamental principles of American constitutional law—ours is a government of limited power. We conclude that the United States Constitution forbids disclosure under the circumstances of this case. Therefore, reconciling federal constitutional law with Ohio's Public Records Act, we conclude that R.C. 149.43 does not mandate that the city of Akron disclose the SSNs of all of its employees upon demand.

to a public office.⁷ After noting the differing circumstances, 1996 Op. Att’y Gen. No. 96-034 simply found that the *City of Akron* decision did not compel a county recorder to redact social security numbers from documents presented for recording.

Although not expressly addressed by the 1996 opinion, we note that R.C. 149.43 itself does not forbid the disclosure of information that is not a “public record.” Rather, R.C. 149.43 merely requires that if information is a “public record,” a public office has a duty to disclose that information. The *City of Akron* case involved a situation in which the city had denied access to its employees’ social security numbers. In rejecting the newspaper’s request to view such social security numbers, the *City of Akron* court stated that, “the United States Constitution *forbids disclosure* under the circumstances of this case,” 70 Ohio St. 3d at 612 (emphasis added), but then concluded only that, “R.C. 149.43 *does not mandate that the city of Akron disclose* the SSNs of all of its employees upon demand,” *id.* (emphasis added). Because the city had provided relator with all requested payroll information, but for the employees’ social security numbers, the *City of Akron* court did not need to address whether or not the city possessed an affirmative duty to redact such numbers.

In the years that have elapsed since the decision in *City of Akron*, however, various courts that have considered this question have generally indicated that redaction of social security numbers from documents that contain public records is required prior to public disclosure of the documents. *See, e.g., State ex rel. Beacon Journal Publishing Co. v. Bond*, at ¶25 (stating that certain information, including social security numbers, “should be redacted” from juror questionnaires before disclosure); *State ex rel. Taxpayers Coalition v. City of Lakewood*, 86 Ohio St. 3d 385, 390, 715 N.E.2d 179 (1999) (finding that the city had “properly redacted” social security numbers from employee W-2 forms before disclosure to the public).⁸ Moreover, based upon the *City of Akron* court’s statement that “the United States Constitution forbids disclosure under the circumstances of this case,” 70 Ohio St. 3d at 612, we would recommend that, prior to disclosure of information contained in a court’s civil case files, any social security numbers included in such files be redacted.

⁷ In *State ex rel. Cincinnati Enquirer v. Hamilton County*, 75 Ohio St. 3d 374, 378, 662 N.E.2d 334 (1996), the court held that audio tapes of various “911” emergency calls recorded by law enforcement authorities are “public records” for purposes of R.C. 149.43, regardless of their content, and stated, “it makes no difference that the disclosure of the tapes might reveal *Social Security Numbers* or trade secrets.” (Emphasis added.)

⁸ *But see Bardes v. Todd*, 139 Ohio App. 3d 938, 944, 746 N.E.2d 229 (Hamilton County 2000) (concerning various types of personal information in a court’s divorce files, the *Bardes* court stated that, “Social Security numbers are exempt from the Public Records Act under R.C. 149.43(A)(1) and subject to the federal constitutional right to privacy. When it is ordered under the Public Records Act to disclose documents containing a Social Security number, the appropriate remedy is for the concerned party to move the court to direct the clerk of courts to redact the Social Security number” (footnotes omitted)).

Your question also mentions personal financial information that may be contained in a court's civil case files. We first note that the General Assembly has created specific exceptions to R.C. 149.43 for personal financial information submitted to public offices in certain situations. *See, e.g.*, R.C. 149.43(A)(1)(y) (“[f]inancial statements and data any person submits for any purpose to the Ohio housing finance agency or the controlling board in connection with applying for, receiving, or accounting for financial assistance from the agency, and information that identifies any individual who benefits directly or indirectly from financial assistance from the agency”); R.C. 1322.061(B) (stating, with respect to applications submitted to the Superintendent of Financial Institutions for certification as a mortgage broker or licensure as a loan officer, “[a]ll application information, except social security numbers, employer identification numbers, financial account numbers, the identity of the institution where financial accounts are maintained, personal financial information, fingerprint cards and the information contained on such cards, and criminal background information, is a public record as defined in [R.C. 149.43]”).

Additional statutory exceptions to R.C. 149.43 have been created for certain types of information contained specifically in a court's civil case files. *See, e.g.*, R.C. 149.43(A)(1)(d) (“[r]ecords pertaining to adoption proceedings, including the contents of an adoption file maintained by the department of health under [R.C. 3705.12]”); R.C. 2505.073(B) (stating, in part, “[a]ll papers and records that pertain to an appeal under this section (appeal of denial of consent to unmarried minor to obtain abortion without parental consent) shall be kept confidential and are not public records under [R.C. 149.43]”); R.C. 2925.43(C)(2) (record of proceedings requesting warrant for seizure of property in civil forfeiture action “shall not be a public record for purposes of [R.C. 149.43] until the property has been seized pursuant to the process or warrant”). No such statutory exception to R.C. 149.43's definition of “public record” has been created for personal financial information that otherwise may be contained in a court's civil case files.

Thus, as stated in 2004 Op. Att'y Gen. No. 2004-045 at 2-395:

While we appreciate the potential harm to an individual whose personal financial information is subject to inspection by the public, neither the language of R.C. 149.43 nor any judicial decisions interpreting that language have determined that information concerning an individual's personal finances is, by its nature, excepted from the definition of “public record” for purposes of R.C. 149.43. *See generally In re Estate of Engelhardt*, 127 Ohio Misc. 2d 12, 2004-Ohio-825, 804 N.E.2d 1052 (Prob. Ct. Hamilton County 2004) (denying a request that the court, which posts all of its records on its website, not include sensitive financial information in such posting). Rather, as recently emphasized by the court in *State ex rel. WBNS TV, Inc. v. Dues*, at ¶ 31, the Ohio Supreme Court “has not authorized courts or other records custodians to create new exceptions to R.C. 149.43 based on a balancing of interests or *generalized privacy concerns*,” (emphasis added). Thus, personal financial information

held by a court is a "public record" of the court, unless the information is not a "record" of the court or the information falls within one of the exceptions to the definition of "public record" set forth in R.C. 149.43(A)(1)(a)-(x), *e.g.*, information that is protected by an individual's constitutional right of privacy.

We discern no basis for distinguishing between personal financial information contained in a court's civil case files and that contained in the court's criminal case files for purposes of R.C. 149.43. Accordingly, we find that the foregoing conclusion in 2004 Op. Att'y Gen. No. 2004-045 applies to personal financial information contained in a court's civil case files.

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

1. Because individuals possess a constitutionally protected privacy right in their social security numbers, such numbers when contained in a court's civil case files are not public records for purposes of R.C. 149.43.
2. Prior to releasing information from a court's civil case files, the clerk of court has a duty to redact social security numbers included in those files.
3. An individual's personal financial information contained in a court's civil case files is a public record for purposes of R.C. 149.43, unless the information is not a "record" of the court or the information falls within one of the exceptions to the definition of the term "public record" set forth in R.C. 149.43(A)(1).