

## **Child Protective Services and Confidentiality— Frequently Asked Questions**

This document was created in June 2006 and was designed to answer questions frequently asked by Office of Children’s Services (OCS) workers concerning their duty to keep confidential information about the families they serve. Unless otherwise indicated, the term “sharing information” includes sharing documents, passing on information in conversations, and giving people copies of petitions and other court documents.

OCS employees are encouraged to contact an assistant attorney general in the Child Protection section when they receive an unusual request for confidential information.

- **Must I provide medical records additional protection?**

Yes.

Generally, protected health information such as medical records contained in child protection files may only be released to a public health authority and may not be released to a parent’s attorney or anyone absent a court order. (7 AAC 54.040(b)). The definition for “protected health information” is complicated so any requests for medical records should be referred to an assistant attorney general for review.

- **What confidential information may I share with private custody investigators?**

Nothing in the state’s statutes or regulations gives a court appointed custody investigator the right to confidential information. Therefore they need to produce a court order to obtain access to the information in your file. In some areas of the state the court automatically issues such an order when a custody investigator is appointed. If a custody investigator requests access to OCS records concerning a particular child, ask for a copy of a court order authorizing such access and keep it in the child’s file before authorizing access.

- **What information may I share with a guardian ad litem appointed by the court in a divorce case?**

Your regulation, 7 AAC 54.070, allows for the release of confidential information concerning a child to any guardian ad litem appointed by a court in a case concerning the child. Unless the guardian ad litem was appointed in a child in need of aid proceeding,

ask for a copy of the appointment order and place it in the child's file before releasing the information.

- **What if the district attorney's office or other law enforcement agency such as the FBI asks for information?**

You are required, by AS 47.10.093(b)(6), to share information in your files with a law enforcement agency of this the state or another jurisdiction, including your local district attorney's office, if release of the information is necessary to protect any child or to protect public safety. The broad language of this statute permits sharing of confidential information if it will help in a criminal prosecution, whether or not a child's safety is involved.

In some areas of the state, social workers are represented by an assistant district attorney rather than an assistant attorney general. OCS should share information with these assistant district attorneys as if they were assistant attorneys general.

- **Can I share confidential information about a child with colleagues at the Division of Juvenile Justice?**

The Division of Juvenile Justice should be treated as a law enforcement agency if one of its employees ask for access to confidential information. If they want the information to protect a child or the public safety, they should receive it.

- **May I share confidential information about a child with employees of the Department of Corrections, Division of Probation and Parole for use in preparing pre-sentence reports?**

The Division of Probation and Parole is a law enforcement agency but their adult probation officers have only a limited ability to obtain confidential records from you. Adult probation officers do not prosecute offenders; they monitor convicted felons and make sentencing recommendations to the court. Any request for such information from an adult probation officer should be denied unless the information is to be used to protect a child or the public safety. (AS 47.10.093(b)(6)). For example they should be given the information if they need it to verify that a felon should be denied contact with a child in need of aid because the child was one of his victims or to determine whether the felon should be ordered to pay the costs of treatment for the child.

- **May I share confidential information about a child with other state agencies?**

The answer to this question depends on which state agency seeks the information and why it wants it. You can share information with another state agency if the agency has been asked to provide consultation or services to the child and the agency needs the information to comply with the request. (AS 47.10.093(b)(2)). School officials are entitled to information if needed to provide counseling and support services to the child or to protect the child, or other children or staff at the child's school. (AS 47.10.093(b)(4)). The state medical examiner and child support agencies are also entitled to information necessary for the performance of their duties. (AS 47.10.093(b)(8) and (10)).

Some state agencies have independent investigatory powers that may allow them to demand access to information about a child in the state's custody. For example, the state Department of Health and Social Services has the authority to conduct epidemiological investigations, including the right to test children thought to be infected with a dangerous contagious disease. (AS 18.15.375). Contact an assistant attorney general for help if you receive a request for information from an agency asserting an independent right to your confidential data.

In cases where a child's parents complain about the child's treatment by OCS to a legislator or the governor, lieutenant governor, state ombudsman, attorney general, commissioner of the departments of administration, health and social services, or public safety, you are required to share confidential information with the legislator or executive branch entity. (AS 47.10.092(a)).

- **How much confidential information about a child may I share with the child's foster parents?**

The legislature requires you to provide foster parents with all the information about a child necessary to enable them "to provide appropriate care to the child, to protect the safety of the child, and to protect the safety and property of [foster] family members and visitors [to the foster home]. (AS 47.10.093(b)(3)). Foster parents, as out-of-home providers, may also obtain information by attending court proceedings concerning the child. They are entitled to review court records concerning a child the department intends to place with them or who has been placed with them. (CINA Rule 22(b)). However, you are not required or permitted to give them any information they would have learned if they attended a court hearing unless sharing of the information is required by AS 47.10.093(b)(3).

- **May I share information with representatives of a child's tribe if they haven't intervened in the child in need of aid court proceeding?**

Generally, a tribe must become a party to a child in need of aid proceeding before you are obligated to provide the tribe with confidential information about the child. (CINA Rule 8, 25 U.S.C. section 1912(c)). They must intervene to become a party. However, you can share information with a child's tribe if necessary to obtain the tribe's help in investigating a report of harm or identifying potential out-of-home placements for the child even if the tribe has not intervened. (7 AAC 54.040(d)). In addition, tribal representatives may attend administrative review meetings or other case planning activities concerning a child in state custody even if confidential information is exchanged if necessary to enable the representatives to provide consultation or services concerning the child.

- **How much confidential information can I include in court testimony if asked to testify at a divorce or child custody proceeding or provide information to a parent for use in such a case?**

Generally, protected health information, such as medical records contained in child protection files, may only be released to a public health authority and may not be released to a parent's attorney or anyone absent a court order. (7 AAC 54.040(b)). The definition for "protected health information" is complicated so any requests for medical records should be referred to an assistant attorney general for review. Otherwise, you can disclose information about a child if authorized to do so, by the child's parent, as long as the child is not subject to a child in need of aid proceeding or is otherwise a ward of the state and disclosing the information would not infringe on the privacy rights of the child. (7 AAC 54.050). To determine whether disclosure will infringe the child's privacy rights contact an assistant attorney general in the Child Protection section.

In cases where the child is the subject of a child in need of aid proceeding or a ward of the state, you can only release information without a court order when the information was procured as part of a court-ordered treatment program, when the information is necessary to the parent for the parent's participation in court-ordered treatment, and the right of privacy of the child is not infringed, or when the information is necessary to allow the parent to exercise residual parental rights. (7 AAC 54.060).

You cannot testify at any court proceeding unrelated to a child protection program, such as a divorce proceeding, unless ordered to do so by the court after the court has been advised of the statutes and regulations that protect the confidentiality of the information you are being asked to reveal. (7 AAC 54.120). Contact an assistant attorney general if subpoenaed to testify in such a case.

- **How much confidential information about a child may I share with treatment providers?**

If the department or the child's legal custodian has requested a treatment provider to provide consultation or services to a child subject to a child in need of aid proceeding, you are required to provide the provider with as much information as necessary for the consultation or services. (AS 47.10.093(b)(2); 7 AAC 54.080). If the child is not subject to a child in need of aid proceeding, you cannot release information about the child to a provider unless authorized to do so in writing by the child if the child is emancipated. Otherwise the child's parent or legal custodian must provide written authorization. (7 AAC 54.080).

- **How much confidential information about a child may I release to the child's relatives?**

Generally, being related to a child is not enough to justify access to confidential information the department may have about the child. The parent, the child's guardian and those providing for the physical, social, or mental needs of the child are entitled to that information necessary to protect the safety of the child. (AS 47.10.093(b)(11)). Release of this type of information is governed by 7 AAC 54.040(c) in cases when the child is not subject to a child in need of aid action.

- **What information may I share with a multidisciplinary team?**

Multidisciplinary teams are created by the department to assist the Office of Children's Services with investigation of reports of harm and to provide consultation and coordination for agencies involved in child protection cases. (AS 47.14.300(a)). The department is required by AS 47.14.300(c) to make available records relevant to a case assigned to the team for investigation. Team staff will request the records relevant to cases the team is investigating so you should not have to answer requests from individual team members. You must share that amount of confidential information with members of a multidisciplinary team that the member needs to do his or her duties. (AS 47.10.093(b)(7)). No special protections are provided for types of confidential information such as the names of those who submit reports of harm. However, unless a team demonstrates the need for such information, it should be withheld.

- **What if I receive a request for information from the Disability Law Center?**

Federal law requires OCS to provide access to some of its confidential files to the Disability Law Center if the Center is conducting an investigation of a treatment facility. Contact a Child Protection section assistant attorney general as soon as you receive such a request from the Center.

- **What if I receive a subpoena from a party in a criminal case requiring me to testify at a court hearing or trial?**

Generally, you cannot testify at any court proceeding unrelated to a child protection program, including a criminal proceeding, unless ordered to do so by the court after the court has been advised of the statutes and regulations that protect the confidentiality of the information you are being asked to reveal. (7 AAC 54.120). You can testify without being ordered to do so if the hearing is related to the operation of the OCS child protection program. For example, you could testify at a bail hearing without a court order to support the district attorney's request that the defendant be ordered to have no contact with a child who is thought to be a victim of the defendant. Contact an assistant attorney general if subpoenaed to testify in such a case.

- **May I give confidential information to an agency that provides ankle monitoring services of a person being released from prison?**

You may receive notification that a child's family member is going to be released from prison on condition that he or she will wear an ankle monitor, along with a request for information about the family. You may also be asked whether allowing the prisoner to live with the family will place the child at risk whether or not the family is currently receiving services from OCS. Because the private ankle monitoring agency is acting under contract with the Department of Corrections, they may be treated as a law enforcement agency for purposes of your confidentiality statutes. You can provide them information about the family if you feel it would help protect the children in the home, as would be the case if introduction of the prisoner into the home would place a child at risk. (AS 47.10.093(b)(6)). This might be true even if there is no reason to believe that the prisoner will harm a child in the home if you know that introduction of the prisoner would destabilize the home.

An ankle monitoring agency may also be considered an entity with a legitimate interest for purposes of your regulation 7 AAC 54.040 if no one in the affected family is currently a child in need of aid and you have reason to believe the release of the information may avoid harm to a child. (AS 47.10.093(f)). However, you must provide the information on the form described in 7 AAC 54.040(c). If you give the agency information from a report of harm investigation under AS 47.17 you must omit the name of the person making the report.

- **What information may I share with a person who has made a protective services report?**

If the person was mandated by AS 47.17.020 to make the report, he or she is entitled to some information. After investigating the report of harm you are required to inform the mandatory reporter that the investigation is complete and what steps were taken to protect the child who is the subject of the report. (AS 47.010.93(b)(9)). If the child is not then a child in need of aid, you may release additional confidential information to the reporter, using the form described in 7 AAC 54.040(c) if release of the information will prevent physical harm to the child.

- **What information may I share with a parent, or an employer, if I have reason to believe children in their care are at risk by an individual I know who has committed sexual or physical abuse of a child?**

Generally, you may share with a child's parent, guardian, caregiver, or an entity responsible for ensuring the child's safety, such as a school or daycare confidential information as necessary to protect the safety of the child. (AS 47.10.093(b)(11)). This allows you to warn parents and the daycare managers that a known child abuser works at the daycare. Because this may impact a person's employment, it is essential that the information you have is reliable before you share it. Please contact an assistant attorney general to discuss.