

Policy Title:	Procedures for Maintaining Confidentiality – Policy		
Policy Number:	I-A.3.1	Version:	Effective Date: 01/02/1996

Approved By: *on file*

Date Approved

Policy

Forms, etc.

References

Contact

Reference(s):

- ORS 7.211
- ORS 135.845 & .855
- ORS 192.410-500
- ORS 411.320
- ORS 418.130
- ORS 419B.035
- ORS 419A.255
- Child Welfare Policy III-F.1.6, OAR 413-350-000 thru 090
http://www.dhs.state.or.us/policy/childwelfare/manual_1/iii-f16.pdf
- Child Welfare policy I-A.3.2, OAR 413-010-0000 thru 0075
http://www.dhs.state.or.us/policy/childwelfare/manual_1/i-a32.pdf
- CF 2090, "Notice of Privacy Practices"
<http://dhsforms.hr.state.or.us/Forms/Served/DE2090.pdf>
- CF 2099, "Authorization for Use and Disclosure of Information"
<http://dhsforms.hr.state.or.us/Forms/Served/DE2099.pdf>

Form(s) that apply:

- None referenced.

Policy:

(1) This policy outlines the Department's expectations of staff in carrying out the intent of the administrative rules on "Confidentiality" (OAR 413-010-0000 through 0140) which is in Child Welfare Policy Stations as I-A.3.2 and as an administrative rule on Inspection and Copying of Records (OAR 413-350-0000 through 0090) which is III-F.1.6 in Child Welfare Policy Stations.

(2) The Family Education Rights and Privacy Act of 1974 (US Code Title 20) known as the "Buckley Amendment" and a number of different statutes cited below, including the Oregon Public Record Law, control the information the Department can disclose about clients. The statutes at times overlap and appear to disagree with each other. **THIS POLICY (I-A.3.1)**

MUST BE READ IN CONJUNCTION WITH I-A.3.2. The information about Child Welfare clients which is exempt from disclosure to the public is listed below:

(a) Oregon's Public Records Law (ORS 192.500) indicates that personal information shall be exempt from public disclosure unless public interest requires disclosure in a particular instance. However, not all information about an individual is considered confidential. For the purpose of this rule, personal information is that which is normally not shared with strangers. Most of the information in client records is confidential and is not accessible to the public;

(b) Criminal investigatory information is conditionally exempt from disclosure. These statutes provide that a public agency may refuse to disclose information during the course of an ongoing investigation, and under ORS 192.500(1), ORS 135.845, and ORS 135.855. Following the completion of an investigation, the agency may refuse to disclose information provided in confidence if the information was not used in court;

(c) Child abuse reports and records of the investigation of child abuse reports are confidential under ORS 419B.035;

(d) Several federal laws and regulations as well as state laws and rules provide that information concerning persons applying for or receiving public assistance, medical assistance, mental health services, drug or alcohol treatment is confidential;

(e) ORS 419A.255 requires that juvenile court records be withheld from public inspection;

(f) Adoption records are confidential under ORS 7.211. Finalized adoption records are sealed and can only be opened in accordance with ORS 109.425 and ORS 109.500 or by court order;

(g) Juvenile court records may be expunged by order of the court under ORS 419A.260 through 419A.262. Once a juvenile court record is expunged no information at all can be given out about the case;

(h) In accordance with ORS 192.500(2)(c), information voluntarily submitted by citizens to the Department in confidence will reasonably be considered confidential when:

(A) The information is not otherwise required by law to be submitted; or

(B) The agency has obligated itself in good faith to not disclose the information; or

(C) Disclosure of the information would cause harm to the public interest.

(i) Child Specific Information from the Central Child Abuse Registry is shared only with physicians, law enforcement agencies, and Child Welfare personnel when they are investigating or assessing a child abuse situation regarding the child in question or another child in the family. Under ORS 419B.030, when the agency shares specific case information from the Central State Registry, it shall include a notice that the information does not necessarily reflect any subsequent proceedings that

are not within the jurisdiction of the agency.

(3) For Protection of Information and Certain Disclosures

(a) Each Child Welfare employee shall be informed that client information and records are confidential. As a minimum, each employee shall be required to read the confidentiality rules, the rules for inspection and copying of records, and these procedures, and be given an opportunity to discuss them with their supervisor;

(b) No employee, volunteer, or other agent of the agency may disclose information about clients except as stated in the confidentiality rules, or at the direction of a court of competent jurisdiction, or upon the advice of the Attorney General. The legal penalties for unauthorized use or disclosure of information are prescribed in ORS 411.990 and 418.990; and such activity is also cause for disciplinary action under personnel rules;

(c) Each Child Welfare office shall have written procedures for the handling and storage of records. The procedures shall assure the privacy of information and the accessibility of case material for staff who need to know and use the information;

(d) Client records shall be kept in the normal working areas of a Child Welfare office. When not in use, client records will be filed according to the office procedures;

(e) Court orders and subpoenas originating in Oregon are legally binding and must be followed or disposed of legally. When an order or subpoena is received which appears to conflict with the rules or the best interest of a client, Child Welfare staff will either contact the person who initiated the order or subpoena and request it be changed, or seek legal counsel;

(f) Staff are to be aware that a court order or subpoena from another state may be binding in Oregon. Legal consultation should be sought immediately upon the receipt of such documents. Follow procedures in Child Welfare policies III-A.5 and I-B.1.2 regarding how to respond to subpoenas;

(g) When attorneys are provided records which contain information which would be harmful to a child if the attorney released it to his or her client, the Department should inform the District Attorney so that the D.A. can determine if a protective order should be requested to restrict the attorney from releasing the information;

(h) When verbal or written disclosure is made, Child Welfare staff shall release only the information that is required by law, or needed to arrange for the services or to fulfill administrative requirements;

(i) Copies of information from client records shall be stamped "Confidential" before they are released. If mailed, the confidential material should be sent "certified" and "registered";

(j) When copies of client information are used for ad hoc consultation (e.g., staffings, Adoption Committee, FC reviews, child protection teams, education planning) and is not needed for the permanent file of the consultant, Child Welfare staff are expected to retrieve the copies and have them destroyed.

(4) Access and Disclosure of Information

(a) The information in this section is to assist staff in carrying out the provisions of the confidentiality rules related to "Access to Client Records" and "Disclosure of Information";

(b) Reports of family interaction, psychological and psychiatric evaluations or exams, arranged by Child Welfare for the stated purpose of case planning, may be made available to a client or other appropriate persons including foster parents only if the document has been identified by the originator for general release and only when it is determined by the child's social service worker that release of information is in the child's best interest. Such reports are different than confidential treatment reports which are restricted by the administrative rules;

(c) In addition to the persons listed in the rules, the following persons also have access to client records:

(A) Child Welfare staff responsible for providing or administering services;

(B) The offices of the Director of Human Resources, the Governor, Citizen Representative, or a citizen review committee appointed by the agency may have access to determine that laws and rules are being faithfully executed;

(C) The Attorney General's Office or the Risk Management agency have access to client files when either is representing the interests of the agency;

(D) A Citizen Review Board appointed by the court or by the Department shall have access to the record of a child who is under the jurisdiction of the court and in the care and custody of the Department, for the purpose of reviewing the agency's planning for the child;

(E) Foster parents responsible for providing services when such information is required for case planning or to support casework.

(d) In order to protect the identity of the person(s) making a report of suspected child abuse, service staff are advised to only identify the reporter(s) on the back of the CF 307. In any other discussion about information provided by the person he or she can be described as a witness, a collateral contact, etc., who was interviewed about the report;

(e) Examples of acceptable reasons to disclose information to prevent abuse or for administration of program include, but are not limited to:

(A) Notification of a child caring agency or day care provider that an employee, or potential employee has established a criminal history as a perpetrator of child abuse;

(B) Sharing information with a person who is caring for a child at risk of abuse when Child Welfare has reason to believe the child is coming in contact with a person who has established a criminal history as a perpetrator of child

abuse;

(C) Sharing information with an agency or court involved in child placement, adoption, custody or guardianship proceedings about an adult who has a criminal history of abuse or neglect, if the adult is being considered as a physical custodian or is a member of a household that is under consideration;

(D) Sharing information with an agency or court involved in child placement, adoption, custody or guardianship about a child who has been abused or neglected when the child is the subject of a study or proceeding and the information is needed in order to assure appropriate planning for the child;

(E) Giving feedback to a person who made a report of suspected child abuse or neglect.

(f) The decision to release information to the public about a child in the Department's legal custody must be made by a staff person having authority to make decisions as a legal guardian (see Child Welfare policy I-B.1.4). Care shall be taken to avoid public identification of the child as a client of the Department unless it is necessary in order to secure essential services;

(g) Questions about individual confidentiality case situations which are not covered by the administrative rules (see Child Welfare policy # I-A.3.2) or these procedures should be brought to the attention of the service supervisor or branch manager. Program and Policy Office managers can be contacted for consultation on confidentiality issues. However, if local management staff believe legal consultation or representation is indicated, they are to follow the procedures outlined in Child Welfare policy # III-A.5 including consultation with staff in the Child Welfare Field Operations.

(5) Obtaining Confidential Information

When information of a confidential nature is to be requested from sources outside the family, written permission (DHS-CF 2100) to secure the information shall be obtained from the client or the legal guardian using an "Authorization for Release of Information" (DHS-CF 2100). An original of the form shall be sent to the person or organization requested to provide the information.

Contact(s):

- **Name:** CAF Reception; **Phone:** 503-945-5600