

Policy Title:	Confidentiality of Client Information – OAR		
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Approved By: *on file*

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Policy

Forms, etc.

Definitions

References

Contact

History

Reference(s):

- ORS 409.225
- ORS 419A.255
- ORS 419B.035
- Oregon Laws 2013 Chapter 417 (SB 622)
- Oregon Laws 2013 Chapter 346 (SB 623)
- OAR 407-014 (DHS Privacy and Confidentiality rules)
- Child Welfare policy I-A.3.1, "Procedures for Maintaining Confidentiality"

Form(s) that apply:

- 2099, "Authorization for Use and Disclosure of Information"

Rules:

413-010-0000

Purpose

The purpose of these rules (OAR 413-010-0000 to 413-010-0075) is to describe circumstances in which the Department may and may not *disclose client information* without a court order.

Stat Auth: ORS 409.050, 418.005

Stats. Implemented: ORS 409.010, 409.225, 419A.255

413-010-0010

Definitions

As used in these rules (OAR 413-010-0000 to 413-010-0075):

- (1) "Adoption records, papers, and files" means all documents, writings, information, exhibits and other filings retained in the court's record of an adoption case pursuant to Oregon Laws 2013, Chapter 346, Section 6 (SB 623), and includes but is not limited to the Adoption Summary and Segregated Information Statement described in OL 2013, Ch. 346, Sec. 5 and exhibits attached to the statement, the petition and exhibits attached to the petition pursuant to OL 2013, Ch. 346, Sec. 4, and any other motion, judgment, document, writing, information, exhibit or filing retained in the court's record of the adoption case.
- (2) "Adult" means a person 18 years of age or older.
- (3) "Child" means a person under 18 years of age.
- (4) "Client" means a person to whom the Department provides services.
- (5) "Client file" means an electronic or paper file that the Department marks with the names of one or more clients, into which the Department places all of the named clients' records. A "client file" may contain *confidential information* about other clients and persons who are not clients.
- (6) "Client information" means *confidential information* about a *client* or identified with a *client*.
- (7) "Client record " means any *record*, which includes *client information* and is created by, requested by, or held by the Department. A "client record" does not include general information, policy statements, statistical reports or similar compilations of data, which are not identified with an individual *child*, family or other recipient of services.
- (8) "Confidential information" means information that is unavailable to the public by statute, rule, or court order.
- (9) "Court Appointed Special Advocate (CASA)" means a volunteer who is appointed by the court, is a party to the juvenile proceeding, and advocates for the *child* pursuant to ORS 419A.170.
- (10) "Department" means the Department of Human Services, Child Welfare.
- (11) "Disclose" means reveal or provide *client information* outside of the Department of Human Services to a person, agency, organization, or other entity. Disclosing includes, but is not limited to:
 - (a) Showing or providing a *client record* or copy of a *client record*; and
 - (b) Orally transmitting *client information*.

- (12) "Guardian" means an individual who has been granted guardianship of a *child* through a judgment of the court.
- (13) "Legally emancipated " means a person under 18 years of age who is married or has been emancipated by the court in accordance with the requirements of ORS 419B.558.
- (14) "Record" means a record, file, paper, or communication and includes but is not limited to any writing or recording of information including automated records and printouts, handwriting, typewriting, printing, photostating, photographing, magnetic tapes, videotapes or other documents. "Record" includes records that are in electronic form.
- (15) "Service" means assistance that the Department provides clients.
- (16) "Voluntary services" means services that the Department provides at the request of a person or persons and there is no open and related juvenile court proceeding.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 409.225, 419A.170, 419A.255

413-010-0030

Protection of Information

In the interest of family privacy and to protect children, families, and other recipients of services, except as provided by Oregon statutes and these rules (OAR 413-010-0000 to 413-010-0075):

- (1) *Client information* is confidential.
- (2) Client records are not available for public inspection.
- (3) Oregon statutes, OAR 407-014, and these rules regulate the Department's disclosure of *client information* by prohibiting disclosure of some *client information*, mandating disclosure of some information, and giving the Department discretion to *disclose* some information, as provided in OAR 413-010-0035, 413-010-0045, 413-010-0055, 413-010-0065, and 407-014.

Stat. Auth.: ORS 409.050, 418.005

Stats. Implemented: ORS 409.010, 409.225, 419A.255, 419B.035

413-010-0035

Prohibited Disclosures

- (1) If a court order or a specific statute requires the Department to *disclose* information that this rule protects, the Department must *disclose* the information.

- (2) The Department may not *disclose client information*:
- (a) For purposes not directly connected with the administration of child welfare laws; or
 - (b) When disclosure is not required nor authorized by:
 - (A) ORS 419B.035 (governing confidentiality of child abuse records), set out in section (11) of this rule;
 - (B) ORS 419A.255 (governing confidentiality of juvenile court records) set out in section (12) of this rule; or
 - (C) Another statute.
- (3) The Department may not *disclose* investigatory information compiled for criminal law purposes, including the record of an arrest or a report of a crime, unless law enforcement explicitly authorizes the Department to *disclose* such information.
- (4) Department employees may not *disclose* the information described in section (3) of this rule unless authorized to do so by the branch manager or designee.
- (5) A person authorized to review client records may not review the complete case file if the complete file contains *confidential information* about other persons, including, but not limited to other clients, ex-spouses, battering partners, housemates, and half-siblings unless the other person provides written consent that meets the requirements of OAR 413-010-0045(2)(a).
- (6) The Department may not *disclose* the records of a patient at a drug and alcohol abuse treatment facility to any person without the consent of the patient.
- (7) The Department may not *disclose client information* contained in a *record* sealed by a court order of expunction or any part of the expunged *record*.
- (8) Adoption Records, Papers, and Files.
- (a) The Department may not access, use, or *disclose adoption records, papers, and files* in its possession except as provided in OL 2013, Ch. 346, Sec. 6.
 - (b) Subject to subsection (c) of this section, the Department may, without a court order, access, use, or *disclose adoption records, papers, and files* in its possession for the purpose of providing adoption services or administering child welfare services that the Department is authorized to provide under federal or state law.
 - (c) The Child Permanency or Post-Adoption Program Manager, or their designee, must authorize access to, use of, or disclosure of *adoption records, papers, and files* by other Department employees.

- (9) Adoption Assistance Records. Records and information obtained or created by the Department for the purposes of determining eligibility or making payment for adoption assistance are client records and may only be accessed, used, and disclosed for purposes directly connected with the administration of the adoption assistance program or child welfare laws in accordance with OAR 413-010-0000 to OAR 413-010-0075.
- (10) Reporter of Abuse. The identity of the person making a report of suspected child abuse, and any identifying information about the reporting person, must be removed from the records or shielded from view before records are viewed or copied. The name, address or other identifying information may only be disclosed to a law enforcement officer or district attorney in order to complete an investigation report of child abuse.
- (11) Reports and Records Compiled Pursuant to the Child Abuse Reporting Law.
- (a) Each report of suspected child abuse must be immediately reported to a law enforcement agency.
 - (b) The Department must assist in the protection of a *child* who is believed to have been abused or neglected by providing information as needed to:
 - (A) The juvenile court;
 - (B) The district attorney;
 - (C) Any law enforcement agency or a child abuse registry in another state investigating a child abuse report;
 - (D) Members of a child protection team or consultants involved in assessing whether or not abuse occurred and determining appropriate treatment for the *child* and family;
 - (E) A physician who is examining a *child* or providing care or treatment, and needs information about the child's history of abuse; and
 - (F) A non-abusing parent, foster parent, or other non-abusing person responsible for the care of the *child*.
 - (c) A report, *record*, or findings of an assessment of child abuse may not be disclosed until the assessment is completed, except for the reasons stated in paragraphs (e)(A) and (B) of this section. An assessment will not be considered completed while either a protective service assessment or a related criminal investigation is in process. The Department determines when the protective service assessment is completed. The district attorney determines when a criminal investigation is completed.

- (d) Records or findings of completed child abuse assessments must be released upon request to the following:
 - (A) Attorneys of record for the *child* or child's parent or *guardian* in a juvenile court proceeding for use in that proceeding; and
 - (B) A citizen review board established by the Department or by a juvenile court to review the status of children under the jurisdiction of the court for the purpose of completing a case review. Before providing information to a citizen review board, the Department must assure that the board has informed participants of their statutory responsibility to keep the information confidential, and will maintain records in an official, confidential file.
- (e) Records or information from records of abuse and neglect assessments may be disclosed to other interested parties if the Department determines that disclosure to a person or organization is necessary to:
 - (A) Administer child welfare services and is in the best interests of the affected *child*. When disclosure is made for the administration of child welfare services, the Department will release only the information necessary to serve its purpose; and
 - (B) Prevent abuse and neglect, assess reports of abuse or neglect, or protect children from further abuse or neglect.

(12) Juvenile Court Records in Department Files.

- (a) The Department may not *disclose* records and information in its possession that are also contained in the juvenile court's record of the case or supplemental confidential file, defined in subsections (b) and (c) of this section, except as provided in ORS 419A.255 and other federal and state confidentiality laws pertaining to client records.
- (b) Record of the Case.
 - (A) The juvenile court's "record of the case", as defined in OL 2013, Ch. 417, Sec. 1 (SB 622), includes but is not limited to the summons, the petition, papers in the nature of pleadings, answers, motions, affidavits, and other papers filed with the court, orders and judgments, including supporting documentation, exhibits and materials offered as exhibits whether or not received in evidence, and other records listed in OL 2013, Ch. 417, Sec. 1.
 - (B) The record of the case is unavailable for public inspection, but is open to inspection and copying as provided in ORS 419A.255.
- (c) Supplemental Confidential File.

- (A) The juvenile court's "supplemental confidential file", as defined in OL 2013, Ch. 417, Sec. 1, includes reports and other material relating to the child's history and prognosis, including but not limited to reports filed under ORS 419B.440, that are not or do not become part of the record of the case and are not offered or received as evidence in the case.
 - (B) The supplemental confidential file is unavailable for public inspection, but is open to inspection and copying as provided in ORS 419A.255.
 - (C) The Department is entitled to copies of material maintained in the supplemental confidential file and if such material is obtained, the Department must ensure the confidentiality of that material as provided in ORS 419A.255.
 - (d) Reports and other materials relating to the child's history and prognosis in the record of the case or in the supplemental confidential file are privileged and except at the request of the *child*, are unavailable for public inspection but are open to inspection and copying as provided in ORS 419A.255.
 - (e) When the Department inspects or obtains copies of reports, materials, or documents pursuant to ORS 419A.255(4), the Department may not use or *disclose* the reports, materials, or documents except as provided in ORS 419A.255.
- (13) Records Received from the Oregon Youth Authority or the Juvenile Department. The Department must preserve the confidentiality of reports and other materials it receives from the Oregon Youth Authority or the juvenile department relating to the *child*, ward, youth or youth offender's history and prognosis, as provided in ORS 419A.257.

Stat. Auth.: ORS 409.050, 418.005. 418.340

Stats Implemented: ORS 409.010, 409.194, 409.225, 418.005, 419A.102, 419A.255, 419A.263, 419B.035, 432.420, OL 2013, Ch. 417, OL 2013, Ch. 346

413-010-0045

Mandatory Disclosure

- (1) The Department must *disclose client information* if disclosure is required by ORS 419A.255 or ORS 419B.035.
- (2) Unless a *client record* is exempt from disclosure under the Public Records Law, ORS 192.410 through 192.505, the Department must *disclose* the *client record* in the circumstances described below:
 - (a) If the *client* is 18 years or older or *legally emancipated*, the Department must *disclose*, upon request:

- (A) The client's records to the *client* if no court order prohibits the disclosure; or
 - (B) The client's records to a third party if no court order prohibits the disclosure and the *client* has authorized the Department in writing to *disclose* the records to the third party.
- (b) Upon the request of a child's parent or *guardian*, the Department must *disclose* a child's client records to the parent or *guardian* if the *child* is receiving voluntary Department services.
- (c) Upon the request of a child's parent or *guardian*, the Department must *disclose* a child's client records to the parent or *guardian* if the *child* is or has been in the Department's custody unless:
- (A) The *child* objects;
 - (B) Disclosure would be contrary to the best interests of any *child*; or
 - (C) Disclosure could be harmful to the person caring for the *child*, including, but not limited to, foster parents, treatment providers and relatives other than the child's parent or *guardian*.
- (d) The Department must *disclose* a child's *client record* to the juvenile court in juvenile proceedings, including tribal proceedings regarding the *child*;
- (e) The Department must *disclose* a child's client records to an attorney who identifies himself or herself as the child's attorney if the juvenile court confirms that he or she is the attorney of record in a juvenile proceeding.
- (3) Information related to the Department's activities and responsibilities in child abuse or neglect cases. Upon request, the Director or the Director's designee must review the information related to the Department's activities and responsibilities:
- (a) When child abuse or neglect causes the death or near death of a *child* or an *adult* is charged with a crime related to child abuse or neglect; and
 - (b) Unless the information is exempt from disclosure under other law, the Director or the Director's designee must determine an appropriate time for disclosing the information and that determination must depend on, among other things, the status of any child abuse or criminal investigations and the privacy interests of the victims.
- (4) Disclosure to Court Appointed Special Advocate (CASA):
- (a) Access to information. Upon presentation of the order of appointment by the court, a CASA, without the consent of the *child* or children or parents, may inspect

and copy any records relating to the *child* or children involved in the case held by the following entities:

- (A) The Department, the state courts, and any other agency, office or department of the state; and
 - (B) Hospital, school organization, division, doctor, nurse or other health care provider, psychologist, psychiatrist, police department or mental health clinic.
- (b) All records and information acquired or reviewed by a CASA during the course of official duties are confidential;
 - (c) When a CASA is also the guardian ad litem pursuant to federal law, this rule governs the guardian ad litem's access to information.
- (5) If, in the professional judgment of the caseworker, information about a *child* indicates that the *child* presents a clear and immediate danger to another person or entity, the Department must *disclose* the information to the appropriate authority and to the person or entity in danger. The decision to release information in these circumstances will be made in consultation with a supervisor.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS Chapter 192.410-192.505, 409.225, 419A.170, 419B.035

413-010-0055

Mandatory Disclosure if in the Child's Best Interest

- (1) Unless *client information* is exempt from disclosure under another provision of law, and if disclosure is in the child's best interest, the Department will *disclose client information* records to the following persons:
- (a) Employees of the Department of Human Services to the extent necessary to perform their official duties, determine the child's or family's eligibility for services, or provide services to the *child* or family;
 - (b) The Division of Child Support of the Department of Justice, when information is needed in order to locate children or absent parents, and to establish support for children in substitute care; and
 - (c) Treatment providers, foster parents, adoptive parents, school officials or other persons providing services to the *child* or family to the extent that such disclosure is necessary to provide services to the *child* or family. Such services include, but

are not limited to, those provided by foster parents, child care centers, private child caring agencies, treatment centers, Indian social service or child welfare agencies, physicians and other health care providers, mental health professionals, volunteers, student interns, and child protection teams.

(2) Sensitive Review Committee.

- (a) The Director of the Department of Human Services (Director) may choose to convene, either on the Director's own motion or upon a request of the President of the Senate or the Speaker of the House, a sensitive review committee for the purpose of reviewing the actions of the Department, in order to improve the quality of and strengthen child welfare practice in future cases. If the Director convenes a committee at the request of the President or the Speaker, then the Director must submit the final written report containing the findings, conclusions, and recommendations of the committee to the President and the Speaker no more than 180 days after receiving the request from the President or the Speaker.
- (b) Unless *client information* is exempt from disclosure under ORS Chapter 192 or another provision of law, and if disclosure is in the child's best interest, the Director or the Director's designee must direct disclosure of relevant *client information* to persons appointed to a sensitive review committee convened by the Director.
 - (A) Any *record* disclosed to the committee members must be kept confidential by the members of the committee and must be used only for the purpose for which the *record* was disclosed.
 - (B) Any records disclosed to the committee members must be returned to the Department upon completion of the review.

Stat. Auth.: ORS 409.050, 409.194, 418.005

Stats. Implemented: ORS 409.010, 409.194, 409.225, 418.005

413-010-0065

Discretionary Disclosure

- (1) The Department may *disclose client information* when disclosure is required or authorized by:
 - (a) ORS 491B.035 (governing confidentiality of child abuse reports and records), set out in OAR 413-010-0035(11); or
 - (b) ORS 419A.255 (governing confidentiality of juvenile court records) set out in OAR 413-010-0035(12).

- (2) The Department may *disclose client information* for purposes directly connected with the administration of child welfare laws including, but not limited to:
- (a) Disclosure to employees of the Secretary of State's Office, the Department of Administrative Services, the Department of Health and Human Services, and the Department who require information to complete audits, program reviews and quality control;
 - (b) Disclosure to law enforcement officers and district attorneys' offices needing information for child abuse assessments, criminal investigations, civil and criminal proceedings connected with administering the agency's child welfare programs; and
 - (c) Disclosure to the public if a *child* in the Department's legal custody has been abducted or is missing and believed to be abducted, and is in danger of harm or a threat to the welfare of others. The Department may *disclose* limited information to the extent necessary to identify, locate, or apprehend the *child*, including the child's name, description, and that the *child* may pose a threat to the public or himself or herself.
- (3) The Department may *disclose* general information including, but not limited to policy statements, statistical reports or similar compilations of data which are not identified with an individual *child*, family or other recipient of services, unless protected by other provisions of law.
- (4) Presumed Waiver of Protection of ORS 409.225(1). The Department may *disclose* the information described in section (5) of this rule if the Director or the Director's designee determines that all of the following circumstances are present:
- (a) An *adult client* is the subject of *client information* made confidential by ORS 409.225(1);
 - (b) The Public Records Law does not exempt the information from disclosure;
 - (c) The *adult client* has publicly revealed or caused to be revealed any significant part of the *confidential information* and thus is presumed to have voluntarily waived the confidentiality protection of ORS 409.225(1);
 - (d) Disclosure is in the best interest of the *child*; and
 - (e) Disclosure is necessary to the administration of the child welfare laws.
- (5) If disclosure is authorized under section (4) of this rule, the Department may *disclose* information about the person making or causing the public disclosure, not already disclosed, but related to the information made public.

- (6) Review of Department records for research purposes. The Director or the Director's designee may authorize a person or organization to review Department records for research purposes. The Department may not approve the request until the researcher has agreed, in writing, to maintain the confidentiality of individual clients, not to copy the Department records, and not to include identifying information about any *client* in the report or reports of the research.
- (7) Investigation of Other Crime:
- (a) Except as authorized by subsection (2)(b) of this rule, and ORS 409.225, Department employees may not *disclose* to law enforcement *client information* obtained from client records, conversations with clients or other sources if the employee or employees acquired the information because a person is or has been a *client* of the Department;
- (b) A manager or the manager's designee may *disclose* to law enforcement a client's current address when:
- (A) The law enforcement officer provides the name and social security number of the *client*; and
- (B) The officer satisfactorily demonstrates that the *client* is a fugitive felon (as defined by the state), the location or apprehension of such felon is within the law officer's official duties, and the request is made in the proper exercise of those duties.

Stat. Auth.: ORS 418.005, 419B.035

Stats. Implemented: ORS 409.225, 409.230, 419A.225, 419B.035

413-010-0068

Disclosure of Information Exempt Under the Public Records Law

Unless required by court order or specific statute, the Department may not *disclose* information in a *client file* if the information is exempt under the Public Records Law.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 192.410-192.505, 418.005

413-010-0075

Disclosure Procedures

- (1) The manager or the manager's designee must supervise access to records.
- (2) The manager or manager's designee must approve in writing the disclosure or redisclosure of *client information* in the following circumstances:

- (a) The Department currently is the child's legal custodian or *guardian* or the Department was the child's legal custodian or *guardian* when the Department authorized services;
 - (b) The Department currently is serving the *child* pursuant to an Interstate Compact or other interstate agreement; and
 - (c) The *child* is or was evaluated or provided services in conjunction with the Department assessment following a protective service report, regardless of the child's legal status at the time.
- (3) The Department may require a reasonable period of time to prepare a client's *record* for review at the branch or disclosure by mail.
 - (4) The Department may require that a person who seeks to review client records, review the records at an appointed time.
 - (5) Except as provided in OAR 413-010-0065(6), (access to records for research purposes), a person authorized to review the Department *record* may copy the *record*.
 - (6) Any *record* disclosed must be kept confidential by the person to whom the *record* is disclosed and must be used only for the purpose for which disclosure was made.
 - (7) To redisclose lawfully, the person must obtain, before the redisclosure, the written consent of the branch manager or the branch manager's designee.
 - (8) All social service agencies, courts, foster parents, *service* providers (including medical providers), or agents of the Department providing services to the Department's *client* at the request of the agency are subject to the Oregon statutes and the Department rules governing disclosure of *client information*.
 - (9) The Department may not permit a person authorized to review a particular client's file to review the complete file if the file includes information about any other *client*. The Department must permit review of the particular client's records.
 - (10) When copies of *confidential information* are released, the material must be stamped: "Confidential not to be redisclosed".
 - (11) When confidential records and information are part of the *record* in an administrative hearing before the Department, the Department and all participants in the hearing must take all reasonable measures to maintain the confidentiality of the information.

Stat. Auth.: ORS 418.005, 419B.035

Stats. Implemented: ORS 418.005, 419A.255

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