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| <b>Policy Title:</b>  | Confidentiality of Client Information – OAR |                 |                                 |
| <b>Policy Number:</b> | I-A.3.2<br>413-010-0000<br>thru 0075        | <b>Version:</b> | <b>Effective Date:</b> 12/29/10 |

Approved By: *on file*

Date Approved

Policy

Procedures

Forms, etc.

Definitions

References

Contact

History

### Reference(s):

- ORS 419A.255
- Child Welfare Policy I-A.1, "Client Rights"

### Form(s) that apply:

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

### Rules:

#### **413-010-0000**

##### **Purpose**

The purpose of these rules is to describe the circumstances in which SOSCF may and may not disclose client information without a court order.

Stat Auth: ORS 418.005

Stats. Implemented: ORS 419A.255, 409.225

#### **413-010-0010**

##### **Definitions**

- (1) "Adult" means a person who is 18 years of age or older.
- (2) "Child" means a person who is under 18 years of age.
- (3) "Client" means a person to whom SOSCF provides services and includes children, parents, legal guardians, and legal custodians of unemancipated minor children who receive services. Individuals who apply for and individuals who are granted certifications to operate foster homes are not clients. Adoptive parents are clients when:

- (a) SOSCF has placed a child with them on a designated adoption basis; or
  - (b) They have signed a legal risk adoption agreement.
- (4) "Client File" means a file that SOSCF marks with the names of one or more clients, into which SOSCF places all of the named clients' records. A client file may contain confidential information about other clients and persons who are not clients.
- (5) "Client Information" means confidential information about a client or identified with a client.
- (6) "Client Record" means any "record," as defined in section (11) of this rule, which includes client information and is created by, requested by, or held by SOSCF. 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.
- (7) "Confidential Information" means information that is unavailable to the public by statute, rule, or court order.
- (8) "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.
- (9) "Disclose" means reveal or provide client information 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.
- (10) "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.
- (11) "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.
- (12) "Service" means assistance that SOSCF provides clients and includes, but is not limited to homemakers, intensive family service workers, foster parents, child care centers, private child care agencies treatment centers, mental health professionals, volunteers, student interns, child protection teams, physicians and other health care providers, and Indian social service and child welfare agencies.
- (13) "Voluntary Services" means services that SOSCF provides at the request of a person or persons and there is no open and related juvenile court proceeding.

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

### **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:

- (1) Client information is confidential.
- (2) Client records are not available for public inspection.
- (3) Oregon statutes and these rules regulate SOSCF's disclosure of client information by prohibiting disclosure of some client information, mandating disclosure of some information, and giving SOSCF discretion to disclose some information, as summarized below:
  - (a) Summary of some "prohibited disclosures", See OAR 413-010-0035, generally, which includes but is not limited to:
    - (A) Information compiled for criminal law enforcement purposes, See OAR 413-010-0035,(3);
    - (B) Alcohol and drug abuse treatment records. See OAR 413-010-0035(6);
    - (C) Information in records sealed by a court order of expunction, See OAR 413-10-0035(7);
    - (D) Adoption records. See OAR 413-010-0035(8);
    - (E) Adoption assistance records. See OAR 413-010-0035(9);
    - (F) Information identifying a person who reported suspected child abuse. See OAR 413-010-0035(10);
    - (G) Records and reports of child abuse. See OAR 413-010-0035(11); and
    - (H) Juvenile court records. See OAR 413-010-0035(121).
  - (b) Summary of some "mandatory disclosures", See OAR 413-010-0045 which includes but is not limited to:
    - (A) A client 18 years or older, See OAR 413-010-0045(2)(a);
    - (B) A parent or guardian of a child receiving voluntary services, See OAR 413-010-0045(2)(b);
    - (C) A juvenile or tribal court. See OAR 413-010-0045(2)(d);

- (D) A child's attorney in a juvenile proceeding. See OAR 413-010-0045(2)(e);
  - (E) A parent or guardian of a child provided services in certain circumstances. See OAR 413-010-0045(2)(b),(c); and
  - (F) A Court Appointed Special Advocate (CASA). See OAR 413-010-0045(4).
- (c) Summary of some "mandatory disclosures if it is in the child's best interest." See OAR 413-010-0055, generally, which includes but is not limited to:
- (A) DHR employees as needed to perform their duties and provide services to the child or family, See OAR 413-010-0055(1)(a); and
  - (B) Persons providing services to the family to the extent necessary to provide those services described in OAR 413-010-055(1)(c).
- (d) Summary of some "discretionary disclosures". See OAR 413-010-0065 generally, which includes but is not limited to:
- (A) SOSCF and other state employees for audits, program reviews, or quality control;
  - (B) Law enforcement or district attorney's offices for child abuse assessments and investigations and proceedings connected with administering the child welfare laws. See OAR 413-010-0065(2)(b);
  - (C) The public if a child in SOSCF's custody has been abducted or is believed abducted. See OAR 413-010-0065(2)(c);
  - (D) General information, policy statements, statistical reports or similar compilations not identified with a client. See OAR 413-010-0065(3);
  - (E) Adult's presumed waiver of confidentiality. See OAR 413-010-0065(4);
  - (F) Review of SOSCF records for research purposes. See OAR 413-010-0065(5); and
  - (G) Investigation of Other Crime. See OAR 413-010-0065(6).

Stat. Auth.: ORS 418.005, 418.340

Stats. Implemented: ORS 7.211, 409.225, 419A.255, 419A.260, 419B.035, 430.763, 432.420

## 413-010-0035

### Prohibited Disclosures

- (1) If a court order or a specific statute requires SOSCF to disclose information that this rule protects, SOSCF shall disclose the information.
- (2) SOSCF shall not disclose client information:
  - (a) For purposes not directly connected with the administration of child welfare laws; or
  - (b) When disclosure is neither required nor authorized by:
    - (A) ORS 419B.035 (governing confidentiality of child abuse records), set out below in OAR 413-010-0035(11);
    - (B) ORS 419A.255 (governing confidentiality of juvenile court records) set out below in OAR 413-010-0035(12);
    - (C) The information is protected by other law.
- (3) SOSCF shall 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 SOSCF to disclose such information.
- (4) SOSCF employees shall 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 client's, 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) SOSCF shall 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) SOSCF shall not disclose client information contained in a record sealed by a court order of expunction or any part of the expunged record.
- (8) Disclosure of Adoption Records:
  - (a) SOSCF shall neither disclose nor release identifying information to anyone regarding the birth parents of a child who is placed for adoption. It is the intent of this rule to protect from release any information about a child placed for adoption that will link the child to the birth family or the birth family to the child. The whereabouts and new identity of a child shall not be revealed to anyone seeking information about the child by his or her birth name, except as otherwise provided by law;

- (b) Identifying information from adoption files may be given to an adult adoptee or adult genetic sibling (age 21 or older) and to a birth parent when they have met the legal requirements of the Voluntary Adoption Registry as specified in ORS 109.425 to 109.507 and OAR 413-130-0300 to 413-130-0360;
  - (c) When an adoption is finalized, the records must be sealed and may be opened only pursuant to a court order. Only the SOSCF central office adoption staff shall have access to the files. The adoption manager or designee may approve the release of non-identifying information from the files to the child or to the adoptive parents or their designee to provide information about the child's early history or familial history;
  - (d) SOSCF shall not disclose information about adoptive placements.
- (9) Disclosure of Adoption Assistance Records:
- (a) Records and information obtained or created by SOSCF for the purposes of determining eligibility or making payment for adoption assistance are confidential. Only the SOSCF central office adoption staff shall have access to the files. SOSCF shall not use or disclose the information except for purposes directly connected with the administration of the adoption assistance program (42 USC 671(a)(8));
  - (b) Notwithstanding subsection (1) of this rule, use and disclosure of adoption records are governed by ORS 7.211, 432.420.
- (10) Reporter of Abuse. The identity of the person(s) making a report of suspected child abuse, and any identifying information about the reporting person(s), shall be removed from the records or shielded from view before records are viewed or copied. The name, address or other identifying information shall 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 shall be immediately reported to a law enforcement agency;
  - (b) SOSCF shall 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 shall not be disclosed until the assessment is completed, except for the reasons stated in subsections (e)(A) and (B) of this rule. An assessment will not be considered completed while either a protective service assessment or a related criminal investigation is in process. SOSCF is responsible for determining 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 shall 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 SOSCF 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, SOSCF shall 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 SOSCF 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, SOSCF will release only the information necessary to serve its purpose; and
  - (B) Prevent abuse and neglect, to assess reports of abuse and neglect or to protect children from further abuse or neglect.

(12) Juvenile Court Records in SOSCF files:

- (a) The juvenile court's "record of the case" is the "legal file", which includes the summons, other process, the petition, all papers in the nature of pleadings, motions, orders of the court and other papers filed with the court;
- (b) The legal file is confidential and unavailable for public inspection, but is open to

- inspection by the child's parent, guardian, court appointed special advocate, surrogate, intervenor under ORS 109.119(1) and their attorneys;
- (c) The juvenile court's social file includes reports and other material relating to the child's history and prognosis;
  - (d) The social file shall, except at the request of the child, not be disclosed directly or indirectly to anyone other than the juvenile judge and staff acting under the judge's direction, service providers in the case, and the attorneys of record for the child or the child's parent, guardian, court appointed special advocate, surrogate or intervenor under ORS 109.119(1);
  - (e) No information in the legal and social files may be disclosed to any other person not described in subsections(2) and (4) of this rule without the consent of the court, except:
    - (A) For evaluating the child's eligibility for special education under ORS Chapter 343; or
    - (B) In connection with a proceeding in another juvenile court concerning the child.
  - (f) The following information in the juvenile court's file is not confidential and must be disclosed upon request:
    - (A) The name and date of birth of the child;
    - (B) The basis for the juvenile court's jurisdiction over the child;
    - (C) The date, time and place of any juvenile court proceeding in which the child is involved.

Stat. Auth.: ORS 418.005. 418.340

Stats Implemented: ORS 7.211, 409.225, 419A.102, 419A.255, 419A.260, 419B.035, 430.763, 432.420

#### **413-010-0045**

##### **Mandatory Disclosure**

- (1) SOSCF shall 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 Chapter 192, SOSCF shall disclose the client record in the circumstances described below:
  - (a) If the client is 18 years or older or legally emancipated, SOSCF shall 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 SOSCF in writing to disclose the records to the third party.
- (b) Upon the request of a child's parent or legal guardian, SOSCF shall disclose a child's client records to the parent or legal guardian if the child is receiving voluntary SOSCF services;
- (c) Upon the request of a child's parent or legal guardian, SOSCF shall disclose a child's client records to the parent or legal guardian if the child is or has been in SOSCF custody except:
- (A) If 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, which includes, but is not limited to, foster parents, treatment providers and relatives other than the child's parent or legal guardian.
- (d) SOSCF shall disclose a child's client record to the juvenile court in juvenile proceedings, including tribal proceedings regarding the child;
- (e) SOSCF shall 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 SOSCF's activities and responsibilities in child abuse or neglect cases. Upon request, the Director or the Director's designee shall review the information related to SOSCF 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 shall determine an appropriate time for disclosing the information and that determination shall 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) SOSCF, 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, SOSCF shall 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, 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 shall disclose the 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 homemakers, intensive family service workers, 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, 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 shall submit the final written report to the President and the Speaker no more than 180 days after the committee was convened.
- (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 shall 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 shall be kept confidential by the members of the committee and shall be used only for the purpose for which the record was disclosed.
  - (B) Any records disclosed to the committee members shall be returned to the Department upon completion of the review.

Stat. Auth.: ORS 409.194, 409.050, 418.005

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

#### **413-010-0065**

##### **Discretionary Disclosure**

- (1) SOSCF 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) SOSCF 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 SOSCF 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 SOSCF'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. SOSCF 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) SOSCF 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). SOSCF may disclose the information described in section (4)(f) 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;
    - (f) If disclosure is authorized, SOSCF may disclose the following: information about the person making or causing the public disclosure, not already disclosed, but related to the information made public.
  - (5) Review of SOSCF records for research purposes. The Director or the Director's designee may authorize a person or organization to review SOSCF records for research purposes. SOSCF may not approve the request until the researcher has agreed, in writing, to maintain the confidentiality of individual clients, not to copy SOSCF records, and not to include identifying information about any client in the report(s) of the research.
  - (6) Investigation of Other Crime:
    - (a) Except as authorized by OAR 413-010-0065(2)(b), and ORS 409.225, SOSCF employees shall not disclose to law enforcement client information obtained from client records, conversations with clients or other sources if the employee(s) acquired the information because a person is or has been an SOSCF client of the agency;

- (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, 409B.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, SOSCF shall 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 418.005

#### **413-010-0075**

##### **Disclosure Procedures**

- (1) The manager or the manager's designee shall supervise access to records.
- (2) The manager or manager's designee must approve in writing to the disclosure or redisclosure of client information in the following circumstances:
  - (a) SOSCF currently is the child's legal custodian or guardian or SOSCF was the child's legal custodian or guardian when SOSCF authorized services;
  - (b) SOSCF 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 an SOSCF assessment following a protective service report, regardless of the child's legal status at the time.
- (3) SOSCF may require a reasonable period of time to prepare a client's record for review at the branch or disclosure by mail.
- (4) SOSCF 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(5), (access to records for research purposes), a person authorized to review an SOSCF record may copy the record.
- (6) Any record disclosed shall be kept confidential by the person to whom the record is disclosed and shall 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 SOSCF providing services to a SOSCF client at the request of the agency are subject to the Oregon statutes and SOSCF rules governing disclosure of client information.
- (9) SOSCF shall 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. SOSCF shall 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 SOSCF, SOSCF and all participants in the hearing shall 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

### **Procedure(s) that apply:**

None referenced.

### **Contact(s):**

- **Name:** Caroline Burnell; **Phone:** 503-945-6640

### **Policy History**

- 12/29/1995 (not available electronically)
- [06/01/1999](#)
- [7/19/10 thru 1/15/11](#)