

## Chapter 13

## CONFIDENTIALITY OF RECORDS

13-1. Purpose. Federal regulations limit the use of confidential information regarding Title IV-E funded services for purposes directly related to the administration of the program. Section [39.202](#), F.S., provides confidentiality of reports and records in cases involving child abuse and neglect. Other privacy and security requirements apply to individually identifiable information about children and families, such as the Healthcare Portability and Accountability Act (HIPAA) and CFOP [50-2](#), Security of Data and Information Technology Resources.

13-2. Requirements.

a. All child welfare employees, authorized agents and volunteers must receive a copy of CFOP [50-2](#) upon employment or service with the Department. Receipt of this information shall be documented in the employee's or volunteer's personnel file. Pre-service entry-level training shall include current revisions to confidentiality laws and shall be available on an ongoing basis.

b. Information in case records generated as a result of child abuse and neglect investigations is confidential and shall be released only under the specific circumstances provided in s. [39.0132](#), F.S., s. [39.202](#), F.S. and s. [39.2021](#), F.S. Child welfare professionals must become familiar with these statutes and must consult with the region legal counsel or the Children's Legal Services attorney prior to responding to requests for information.

c. An oral request from the public shall be reduced to a written memo reciting the records requested and the date of the request. Any written requests shall be dated to indicate when it was received. When the requested information is provided, the original request will be dated to show how and when the requested material was sent. The name(s) of the employee(s) who gathered the information and the attorney who reviewed the documents will also be recorded. Such records of compliance with the requests for materials/records shall be maintained by regions in the case file or, if the request extends to records in more than one case file, in a separate file entitled "Public Records Requests."

d. Pursuant to s. [39.202\(8\)](#), F.S., the Department shall affix a stamped notice on the first sheet of all documents released pursuant to that section, stating:

"Pursuant to section 39.202(8), Florida Statutes, a person who knowingly or willfully makes public or discloses to any unauthorized person any confidential information contained in the central abuse hotline is subject to the penalty provisions of section [39.205](#), Florida Statutes."

e. The name of any person reporting child abuse, abandonment or neglect shall not be released to any person other than employees of the Department responsible for child protective investigations, the Florida Abuse Hotline, the child protection team, law enforcement, or the appropriate state attorney, without the written consent of the person reporting.

f. The name and all information identifying the reporter must be blacked out (redacted) before allowing access by persons otherwise authorized by law to examine copies of records. Final reports of investigations shall be printed without reporter information. Reports made public after petitioning the court pursuant to section [119.07\(7\)](#), F.S., must have all reporter names and identifying information removed or blacked out prior to release. This redaction process must be reviewed by the region general counsel or Children's Legal Services attorney prior to releasing the information.

g. Any information in the case record that pertains to the adoption of a child or a child's sibling shall not be released without first consulting with the region general counsel or Children's Legal

Services attorney. Disclosure of adoption records is governed by the provisions of section [63.162](#), F.S., and usually requires a court order.

h. If a case record contains non-department procured or funded medical, psychological, or psychiatric reports, school records, or information about clients received from domestic violence centers, which the Department has obtained through consent of the subject, the information must not be released without written authorization of that person which shall include the gathering and release of information for treatment purposes. The person requesting access to the record shall be told of the existence of any such report and referred to the generating source. These reports are confidential and cannot be shared without the consent of the subject.

(1) A limited exception exists if the report, record, or other information has been filed in the official court record. Section [39.0132\(3\)](#), F.S., allows access to documents in the official court record, subject to the provisions of section [63.162](#), F.S., to the child, parents or legal custodians of the child and their attorneys, law enforcement agencies, and the Department and its designees.

(2) Also, section [39.0132\(3\)](#), F.S., does not apply to reports or opinions which form the basis for a dependency petition and which may be discoverable under the Rules of Juvenile Procedure. When a discovery request pertaining to a case in dependency litigation is received, the region general counsel or Children's Legal Services attorney must be consulted prior to the release of any information.

i. Pursuant to section [39.202\(6\)](#), F.S. all records and reports of the child protection team (CPT) are confidential and exempt from the provisions of section [119.07\(1\)](#), F.S. and section [456.057](#), F.S. and shall not be disclosed, except, upon request, to the state attorney, law enforcement, the Department, and necessary professionals in furtherance of the treatment or additional evaluative needs of the child, or by order of the court.

j. Anyone authorized to receive copies of an abuse report and related case material is subject to the same requirements to maintain confidentiality as is the Department employee releasing the information.

(1) For this reason, recipients of case material, other than those authorized Department staff and others authorized in section [39.00145\(4\)](#), F.S., must be asked to sign a statement acknowledging they have received a written notice warning them as to the confidential nature of the records they are receiving, that they understand their responsibility to maintain confidentiality and the penalty for violations.

(2) In addition, confidentiality requirements must be explained to all participants at a case plan conference conducted per requirements in CFOP 170-9, [paragraph 5-2](#).

k. Child welfare staff who utilize laptop computers are reminded that this operating procedure and the security requirements of CFOP [50-2](#) are applicable to such usage.

13-3. Access to Child Abuse Investigative and Related Case Records. Pursuant to section [39.202](#), F.S., the following persons or entities have access to Department records (excluding the name of the reporter except as provided in paragraph 13-2e of this operating procedure) concerning child abuse, neglect or abandonment:

a. The Public. Except for information identifying persons reporting abuse, abandonment or neglect, all records involving the death of a child determined to be a result of abuse, abandonment, or neglect shall be released to the public [s. [39.202\(2\)\(o\)](#), F.S.]. In addition, section [39.00145\(4\)](#), F.S., allows access to Department records to others entitled under this chapter to receive that information.

b. State and County.

(1) Employees, authorized agents, or contract providers of the Department, the Department of Health, or county agencies responsible for carrying out s. [39.202](#), F.S.:

- (a) Child or adult protective investigations;
- (b) Ongoing child or adult protective services;
- (c) Healthy Start services; and,

(d) Licensure or approval of adoptive homes, foster family homes, child care facilities, family child care homes, informal child care providers who receive subsidized child care funding, or other homes used to provide for the care and welfare of children.

(2) Employees or agents of the Department of Juvenile Justice responsible for the provision of services to children pursuant to Chapter [985](#), F.S.

c. Law Enforcement. Criminal justice agencies of appropriate jurisdiction [s. [39.202\(2\)\(b\)](#), F.S.] and the state attorney of the judicial circuit in which the child resides or in which the alleged abuse or neglect occurred [s. [39.202\(2\)\(c\)](#), F.S.].

d. Family of the Child. The parent, or legal custodian of any child who is alleged to have been abused, neglected, or abandoned, and the child, and their attorneys. Access must be granted no later than 60 days after the Department receives the initial report of abuse, neglect or abandonment. However, any information otherwise made confidential or exempt by law (such as SNAP (food stamp) records, independent medical, psychological, psychiatric reports, CPT records, and HIV information) shall only be released in accordance with the federal or state statute, rule, or regulation access provisions applicable to the particular information. Investigators and case managers shall seek the advice of the region legal counsel or Children's Legal Services attorney prior to releasing such information.

e. Alleged Perpetrator. Any person alleged in the report as having caused the abuse, abandonment, or neglect of a child. Access shall be made available no later than 60 days after the receipt of the initial report. When the alleged perpetrator is not a parent, the access shall be limited to information involving the protective investigation only and shall not include any information relating to subsequent dependency proceedings. Further, any information otherwise made confidential (see paragraph d above) shall not be released. [s. [39.202\(2\)\(e\)](#), F.S.]

f. Court. A court upon its finding that access to such records may be necessary for the determination of an issue before the court; however, such access shall be limited to inspection in camera [in the judge's chambers rather than the courtroom] unless the court determines that public disclosure of the information is necessary for the resolution of an issue then pending before the court. [s. [39.202\(2\)\(f\)](#), F.S.]

g. Grand Jury. A grand jury, by subpoena, upon its determination that access to such records is necessary in the conduct of its official business. [s. [39.202\(2\)\(g\)](#), F.S.]

h. Department Officials. Any appropriate official of the Department responsible for:

(1) Administration or supervision of the Department's program for the prevention, investigation, or treatment of child abuse, abandonment, or neglect, or abuse, neglect, or exploitation of a vulnerable adult, when carrying out his or her official function; or,

(2) Taking appropriate administrative action concerning an employee of the Department alleged to have perpetrated child abuse, abandonment, or neglect, or abuse, neglect or exploitation of a vulnerable adult; or,

(3) Employing and continuing employment of personnel of the Department or Agency for Persons with Disabilities. [s. [39.202\(2\)\(h\)](#), F.S.]

NOTE: Legislators are not officials of the Department. A legislator's request for case-specific information must go through the chairman of the committee, which has oversight responsibility for Department programs. The region general counsel or Children's Legal Services managing attorney must review such requests.

i. Auditors and Researchers. Any person engaged in the use of such records or information for bona fide research, statistical, or audit purposes. However, no information identifying the subjects of the report shall be made available to the researcher. [s. [39.202\(2\)\(i\)](#), F.S.]

j. Administrative Hearings. The Division of Administrative Hearings (DOAH) for purposes of any administrative challenge. [s. [39.202\(2\)\(j\)](#), F.S.]

k. Florida Advocacy Council (FAC). Any appropriate official of the FAC investigating a report of known or suspected child abuse, abandonment, or neglect, the Auditor General or the Office of Program Policy Analysis and Government Accountability (OPPAGA) for the purpose of conducting audits or compliance reviews pursuant to law, or the guardian ad litem for the child. [s. [39.202\(2\)\(k\)](#), F.S.]

l. State Child Welfare Agencies. Employees or agents of an agency of another state that has comparable jurisdiction to the jurisdiction described in paragraph 13-3b of this operating procedure. [s. [39.202\(2\)\(l\)](#), F.S.]

m. Public Employees Relations Commission (PERC). PERC for the sole purpose of obtaining evidence for appeals filed pursuant to s. [447.207](#), F.S. Records may be released only after deletion of all information which specifically identifies persons other than the employee. [s. [39.202\(2\)\(m\)](#), F.S.]

n. Department of Revenue. Employees or agents of the Department of Revenue responsible for child support enforcement activities. [s. [39.202\(2\)\(n\)](#), F.S.]

o. Other Professionals. The Department may release to professional persons such information as is necessary for the diagnosis and treatment of the child or the person perpetrating the abuse, neglect or abandonment [s. [39.202\(3\)](#), F.S.].

13-4. HIV/AIDS Information. The following procedures apply to information about HIV/AIDS in the child's FSFN record and information access:

a. Case notes shall not contain any reference to the child's or any other family member's HIV infection or AIDS. A general reference may be used such as the child's "chronic illness."

b. The Department shall disclose to adopting or out-of-home care parents the medical condition, but not the name, of an HIV/AIDS positive child prior to the decision being made to adopt or accept the child into the caregiver's home. Only after the out-of-home care parents have made the commitment to adopt or accept the child into the home shall the name of the child be provided.

c. The out-of-home care parents shall be provided with documentation of the complete medical history and condition of a child placed in their care, including HIV/AIDS status. This documentation must be maintained by the out-of-home care parents and held as confidential information with access

strictly limited to the child's physician(s) and other providers of medical and dental care when treatment is required.

d. Medical documentation needed for school enrollment, child care or similar purpose must be acquired from the physician and may not contain any reference to the child's HIV/AIDS status.

e. With the exception of the child's medical records provided to out-of-home care parents (and to the child's natural parents or other legal guardian), all case material which discloses that the child or any other family member has HIV infection or AIDS must be kept within the FSFN Medical and Mental Health File Cabinet and the hard copy file in a designated "Confidential Information" section used to safeguard sensitive case information.

f. The child and family case records shall not be segregated or flagged in any way which would permit their identification as case records of HIV/AIDS infected children or family members.

#### 13-5. Domestic Violence Information.

a. Child welfare case records shall not contain any reference to the location of a domestic violence shelter, or information indicating that any named individual(s) (e.g., mother and children) are currently residing in a domestic violence shelter. If absolutely necessary, current address information shall state only that the individual is currently residing in a "safe location". See s. [39.908](#), F.S. (location confidential); and s. [90.5036](#), F.S. (domestic violence advocates who are employed or who volunteer at a domestic violence center may claim a privilege to refuse to disclose a confidential communication with a victim).

b. Per s. [39.301\(9\)\(a\)6a](#), F.S., the safety plan for the parent who is a victim of domestic violence may not be shared with the perpetrator. This includes the sharing of any information in the Confidential Child Safety Plan.

13-6. Foster Family Home Licensing Files. Public records law exempts all identifying information (except name) in the foster family home licensing file regarding foster parents (including those who became adoptive parents), their spouses and their children, unless otherwise ordered by the court. Such exempted information includes: the home, business, work, child care, or school addresses; telephone numbers; social security numbers; birth dates; photographs of licensees, their family and other adult household members; identifying information about such persons in neighbor references; the floor plan of the foster family home, and identifying information about such persons contained in similar sensitive personal information that is provided to the Department or CBC lead agency by such persons.

#### 13-7. Penalties.

a. A person who knowingly and willfully makes public or discloses to any unauthorized person any confidential information contained in the central abuse registry is subject to the penalty provisions of section [39.205\(6\)](#), F.S. (second degree misdemeanor).

b. A person who unlawfully discloses HIV/AIDS information is subject to the penalty provisions of section [384.34](#), F.S. (second degree misdemeanor).

### 13-8. Sharing Records with Children.

a. Subsection [39.00145\(2\)](#), Florida Statutes, allows a child who is subject of the record, the child's caregiver, guardian ad litem, or attorney the right to "inspect and copy any official record pertaining to the child," subject only to the provisions of section [63.162](#), F.S., pertaining to adoption records. The following sections of Chapter 39, F.S., are examples of where the law specifically allows a child access to his or her dependency records:

(1) Section [39.504\(5\)](#), F.S., copy of injunction order shall be delivered to the protected party.

(2) Section [39.01\(51\)](#), F.S., includes child in the definition of party.

b. No document shall be released without review and approval of Children's Legal Services attorney. See also, C.E.B. v. Birkin, 566 So.2d 907 (Fla. 4th DCA 1990) [child has clear right under s. [39.0132\(3\)](#), F.S. (1998), to inspection of the official record; "official record" includes any documents that were considered by the judge in reaching the court's determination].

c. Care, concern, and sensitivity should guide sharing of records with children. Investigators and case managers must be aware that some records could be disturbing to the child and be prepared to appropriately respond to the child's reaction. Considering the child's maturity and chronological age, it is recommended that the record sharing take place during a face-to-face meeting with the child and an adult the child knows and trusts. In no case should copies of records simply be handed over to the child.

d. The child is entitled to copies of any official court records, except adoption records, pertaining to his or her case. Therefore, copies of any documents which have been filed with the court and which are also in the Department's case record may be provided to the child. This would include petitions, orders, predisposition reports, judicial review social studies, psychological reports, child protection team reports, medical reports, and any other report or record which has been filed in the official court record. The region general counsel or Children's Legal Services attorney shall be consulted prior to release of any information (other statutory confidentiality provisions may be applicable so as to require referral of the requesting party to the originating source). In addition, the child may be given unredacted copies of notes or minutes of case planning meetings.

e. The client is entitled to one free copy of the client file to which he or she has statutory access. The Department may charge a fee for subsequent copies based upon CFOP [15-9, Chapter 2](#), Charges for Providing Copies of DCF Records or Publications.

### 13-9. Medical/Mental Health Information/Criminal Records in FSFN.

a. Information protected by the Health Insurance Portability and Accountability Act (HIPPA) has special requirements for scanning and viewing.

(1) Medical and mental health records, whether written text or photographs, must be scanned into the Medical and Mental Health section of the File Cabinet only. Such information is protected by the same security used with the Medical and Mental Health screens in FSFN.

(2) Access to information stored in the Medical and Mental Health File Cabinet requires a special security profile for FSFN users assigned to the case, his or her supervisor and certain other designated child welfare personnel.

b. Any criminal records obtained from the Hotline's Criminal Intelligence unit OR national records obtained as a result of a fingerprint check **MUST NEVER** be scanned and uploaded to FSFN.