

## Chapter 13: Confidentiality and legal sealing

<b>A. Confidentiality of CPS records.....</b>	<b>A-1</b>
1. Requests for information.....	A-1
2. Access to CPS records.....	A-2
3. Releasing information to a criminal justice agency.....	A-2
4. Releasing information to other agencies.....	A-3
5. Releasing information to the public.....	A-4
<b>B. Legal sealing of unfounded CPS records.....</b>	<b>B-1</b>

# Chapter 13: Confidentiality and legal sealing

## A. Confidentiality of CPS records

All information maintained by the New York State Office of Children and Family Services (OCFS), local social services districts (LDSSs), and other authorized agencies must adhere to federal and state statutes, and regulations protecting confidentiality. Every staff person with these agencies and programs must comply with the requirements to protect and maintain the confidentiality of information related to the children and families served. Strict confidentiality rules apply whether information is obtained through face-to-face contact, a telephone call, a letter, or accessing a computer database.

All information collected via CPS work is confidential [18 NYCRR 432.7 and SSL §§422(4)(A) & 427-a(5)(d)]. In performing statutory and regulatory duties, such as conducting a CPS investigation, a Family Assessment Response (FAR), or maintaining the records of the Statewide Central Register of Child Abuse and Maltreatment (SCR), OCFS and LDSSs collect and maintain personal information about children and families. The collection, maintenance, use, and dissemination of personal information can directly affect an individual's right to privacy, and federal and state statutes authorize the release of certain information only under specific circumstances, as set forth in law.

### 1. Requests for information

When OCFS or an LDSS receives a request for information, they must determine whether the information requested may be released to that entity or individual. Each LDSS and voluntary authorized agency (VA) is responsible for informing all staff, both employees and volunteers, of their legal responsibilities regarding confidentiality, disclosure of information, and privacy for the children and families they serve.

Unauthorized release of child protective information is a breach of confidentiality, and state law sets forth criminal penalties for the willfully permitting or encouraging the release of confidential CPS information to any person or agency not authorized to have access to the information [SSL §422(12)]. All OCFS, LDSS, and VA staff must respect and safeguard confidential information.

Information contained in CPS records is confidential and may be disclosed only when authorized by law. Confidential CPS information includes all reports registered by the SCR. It also includes all information obtained, reports written, and photographs taken related to a CPS report in the possession of OCFS or the LDSS. Reports and related information are available only to the entities and under the circumstances provided by law [SSL §§422(4)(A), 422(5)(a) & 427-a(5)(d)].

CONNECTIONS (CONNX) includes information about individuals associated with child protective cases, Family Services Intakes, Family Services Stages, as well as foster care providers, state and LDSS staff, and VA personnel. CPS may need to access information regarding some of these individuals by conducting CONNX person searches. While CPS has access to information via the CONNX person search tool for purposes of conducting an investigation or FAR, CPS is not authorized to conduct a clearance (Database Check) on an individual. A Database Check can be conducted only by the SCR. Please see **Chapter 3, Statewide Central Register Responsibilities**, for more information on database checks.

## 2. Access to CPS records

While the general rule is that CPS records are confidential, [Section 422\(4\)\(A\)](#) of the SSL sets forth specific exceptions to the confidentiality standard. These exceptions cover individuals and/or agencies who may be entitled to confidential information related to indicated reports or reports currently under investigation, and the statute describes the circumstances under which different persons and agencies are entitled to confidential information. There are separate confidentiality exceptions for unfounded reports ([Section 422\(5\)](#) of the SSL) and FAR reports ([Section 427-a\(5\)\(d\)](#) of the SSL).

The most common requests for CPS information come from the following entities:

- A person who is the subject of the report or other persons named in the report
- A criminal justice agency (see [Section 3, \*Releasing information to a criminal justice agency\*](#), below)
- A court, upon a finding that the information in the record is necessary for the determination of an issue before the court
- A probation service
- Members of a local or regional fatality review team approved by OCFS
- A CPS in another state

For local procedures on releasing information, please see your county attorney's office or contact the OCFS legal division for more assistance.

## 3. Releasing information to a criminal justice agency

A criminal justice agency is defined as "...a district attorney, an assistant district attorney or an investigator employed in the office of a district attorney; a sworn officer of the division of state police, of the regional state park police, of a county department of parks, of a city police department, or of a county, town or village police department or county sheriff's office or department; or an Indian police officer" [[SSL §422\(4\)\(A\)\(I\)](#)].

CPS frequently works with law enforcement agencies and information can be provided to a criminal justice agency in the following circumstances:

- A criminal justice agency requests the information stating that the information is necessary to conduct a criminal investigation or prosecution of a person; that there is reasonable cause to believe the person is the subject of a report; and that it is reasonable to believe that the information may be related to the investigation and/or prosecution [[SSL §422\(4\)\(A\)\(I\)\(i\)](#)].
- A criminal justice agency requests the information stating that it is conducting an investigation of a missing child, and that:
  - It has reason to suspect that a parent, guardian or other person legally responsible for the child is or may be the subject of a report, or that the child or the child's sibling is or may be named in a report, and
  - Any such information is or may be needed for the investigation of the missing child [[SSL §422\(4\)\(A\)\(I\)\(ii\)](#)].<sup>1</sup>

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<sup>1</sup> "Sharing Child Protective Services Information with Law Enforcement When a Child Is Missing" ([16-OCFS-ADM-07](#))

- A criminal justice agency requests the information while acting in its capacity as a member of a multi-disciplinary team (MDT) established by the LDSS pursuant to [Section 423\(6\)](#) of the SSL [[SSL §422\(4\)\(A\)\(x\)](#)].
- A criminal justice agency requests the information while acting in its capacity as a member of an OCFS-approved local child fatality review team (CFRT) and the information is necessary for the preparation of a fatality report pursuant to [Sections 20\(5\)\(d\)](#) and [422-b\(2\)](#) of the SSL [[SSL §422\(4\)\(A\)\(w\)](#)].

In most cases, an LDSS may provide information from CPS reports to a criminal justice agency only when a subject has been indicated or when the report is under investigation at the time that access to the information is sought. However, a criminal justice agency may have access to unfounded report information in three situations:

- When the criminal justice agency is acting in its capacity as a member of an MDT and is involved in the MDT investigation of a subsequent report of suspected abuse or maltreatment involving a subject of the unfounded report, a child named in the unfounded report, or a child's sibling named in an unfounded report [[SSL §422\(5\)\(a\)\(iii\)](#)].
- When the criminal justice agency verifies that the unfounded report information is necessary to investigate or prosecute an alleged intentional false report to the SCR, pursuant to [Section 240.50\(4\)](#) of the Penal Law [[SSL §422\(5\)\(a\)\(v\)](#)].
- When the criminal justice agency is acting in its capacity as a member of an OCFS-approved CFRT and the unfounded report information is necessary for the preparation of a fatality report pursuant to [Sections 20\(5\)\(d\)](#) and [422-b \(2\)](#) of the SSL [[SSL §422\(5\)\(a\)\(ii\)](#)].

An LDSS must not share information with a criminal justice agency from the record of any CPS report that was assigned to FAR.

In addition, before providing confidential information to a criminal justice agency or any other entity, LDSSs must be certain that the requestor is actually an individual authorized to have access to that information or is making a request on behalf of an agency authorized to have access to that information.

#### **4. Releasing information to other agencies**

CPS and authorized agencies providing preventive, foster care, and/or adoption services share responsibility for assisting families to succeed in meeting the needs of their children. Staff members' ability to access information relevant to the families they are serving provides significant benefits to all staff as well as to children and families.

When an LDSS refers a child or family to a VA for foster care or adoption services, to a preventive services agency, or when a child or a child's family has referred themselves for such services at the request of CPS or the LDSS, the agency providing such services is authorized to receive reports or other necessary information from "under investigation" or "indicated" reports of abuse or maltreatment. Persons or agencies given access to information may exchange such information in order to facilitate the provision or coordination of services to the child or the child's family [[SSL §422\(4\)\(A\)\(o\)](#)]. Other than the exchange of information to facilitate the provision or coordination of services, service providers are prohibited from redisclosing CPS information.

In addition, VAs providing foster care for a child named in a report, whether "under investigation" or "indicated," are authorized access to CPS information during the time the VA is responsible for the care of the child [[SSL §422\(4\)\(A\)\(c\)](#)]. VA staff may also contact the CPS worker to discuss the safety concerns in the case, allegations in the report, and other critical issues that the VA

worker needs to know to provide ongoing services and support to the family and further protection of the child(ren).

CPS is required to ascertain whether the child named in a CPS report or any other child in the home is in the care, custody, or guardianship of an authorized agency (i.e., an LDSS other than the LDSS of which the CPS is a part and/or a VA) and, if so, to provide such authorized agency or agencies with a copy of the report of suspected abuse or maltreatment as soon as possible. In addition, CPS must also inform the other LDSS and/or VA of the outcome of the CPS investigation, specifically whether the report was indicated or unfounded [SSL §424(6)(b)].

Authorized voluntary and preventive services agencies that obtain confidential CPS information are prohibited from redisclosing such information, except as authorized by law. When an authorized voluntary agency or a preventive services agency is advised by CPS of the existence of a report of suspected child abuse or maltreatment, such agency must not notify the family or child of the existence of the report. Such disclosure is not authorized by law and may jeopardize the investigation and the efforts to prevent further abuse or maltreatment.

If a parent or child asks the authorized voluntary agency or preventive services agency to provide information that the agency has received from CPS, the agency should refer the parent or child to the applicable CPS to request access to the information.

## 5. Releasing information to the public

The OCFS Commissioner and LDSS commissioners may disclose certain CPS information to the general public under limited circumstances [SSL §422-a(1)]. (In this context, disclosure to the public means release to any person or agency not otherwise entitled to access to SCR/CPS information pursuant to Sections 422(4)(A), 422(5)(a) or 427-a(5)(d) of the SSL, as discussed above.) They must first determine that the disclosure is not contrary to the best interests of the child, the child's siblings, or any other children in the household [SSL §422-a(1)]. In making such determination, the OCFS or LDSS commissioner must consider the privacy interests of the child(ren) and family, and the effects any disclosure may have on efforts to reunite and provide services to the family [SSL §422-a(5)]. If that determination is made, and if any one of the following factors is present, OCFS or the LDSS Commissioner may release the information. The factors are:

The subject of the report has been charged in an accusatory instrument with committing a crime related to a report maintained in the SCR.

The investigation of the abuse or maltreatment of the child by the local CPS or the provision of services by CPS has been publicly disclosed in a report required to be disclosed in the course of their official duties by a law enforcement agency or official, a district attorney, any other State or local investigative agency or official, or by a judge of the unified court system.

There has been a prior knowing, voluntary, public disclosure by an individual concerning a report of child abuse or maltreatment in which such individual is named as the subject of the report.

The child named in the report has died or the report involves the near fatality of a child. "Near fatality" means an act that results in the child being placed, in serious or critical condition, as certified by a physician [SSL §422-a(1)].

If OCFS or the LDSS determines that CPS information may be released, the information that may be released is limited, based on the status of the investigation.

If the request for public disclosure is made while the report is under investigation, the only information that may be disclosed is a statement that a report is "under investigation" [SSL §422-a(3)(a)].

If there was a prior request for public disclosure while the report was under investigation and the report is unfounded, the only information that may be released is a statement that “the investigation has been completed, and the report has been unfounded” [SSL §422-a(3)(b)]. If no such prior request was made, the fact that a report was unfounded may not be released, except in connection with a subsequent indicated report, as discussed below.

If the report has been indicated, the information that may be released is limited to:

- The name(s) of the abused/maltreated child(ren)
- That the report was indicated, and the basis for that determination
- Identification of CPS and other services provided to the child(ren) named in the report and the family
- Whether any SCR report concerning the child(ren) named in the report has been indicated
- Any actions taken by CPS and the LDSS in response to the report at issue and previous CPS reports, including the dates of such reports (including unfounded reports)
- Whether the child(ren) or family received care or services from the LDSS prior to each SCR report involving the child(ren)
- Any extraordinary or pertinent information concerning the circumstances of the abuse or maltreatment and the CPS investigation, where the OCFS or LDSS commissioner determines that such disclosure is consistent with the public interest [SSL §422-a(2) & (3)(c)].

However, no information may be released that would identify the source of the report, or the name(s) of the abused or maltreated child’s siblings, parent or other person legally responsible for the child, or other members of the child’s household, other than the subject(s) of the report [SSL §422-a(4)]. Further, the substance or content of any psychological, psychiatric, therapeutic, clinical or medical reports, evaluations, or similar materials (including the reports, evaluations or other materials themselves) pertaining to the child(ren) or family may not be released except as it applies directly to the cause of the abuse or maltreatment. The LDSS commissioner must consult with the local director of mental hygiene prior to authorizing the release of any psychological, psychiatric or therapeutic reports, evaluations, or similar materials [SSL §422-a (7)].

There is no authority to publicly disclose the existence of a FAR report, or any information from such a report.

Attorneys for the LDSS or attorneys for OCFS should be consulted prior to the release of any information to the public. In addition, where information will be disclosed, the LDSS commissioner must notify in writing the chief executive officer of the county in which the abuse/maltreatment occurred setting forth the basis for the determination to disclose the CPS information [SSL §422-a(6)].

## B. Legal sealing of unfounded CPS records

Before February 12, 1996, when CPS determined there was no credible evidence to substantiated allegations in a CPS report, the report was expunged. Unfounded CPS reports must be legally sealed and remain on file for 10 years from the date the oral report was received by the SCR. Legally sealed unfounded reports are expunged 10 years after the receipt of the report [SSL §422(5)(a) & (b)]. Please see **Chapter 3, *Statewide Central Register Responsibilities***, for information on the early expungement of unfounded reports.

Unfounded reports may only be unsealed and made available to [SSL §422(5)(a)]:

- OCFS for the purpose of supervising an LDSS
- OCFS and local or regional fatality review team members for the purpose of preparing a fatality report
- CPS, OCFS, or all members of a local or regional multidisciplinary investigative team or the Justice Center for the Protection of People with Special Needs when investigating a subsequent report of suspected abuse, neglect or maltreatment involving a subject of the unfounded report, a child named in the unfounded report, or a child's sibling named in the unfounded report
- The subject of the report
- A district attorney, an assistant district attorney, an investigator employed in the Office of a District Attorney, or to a sworn officer of the division of state police, of a city, county, town or village police department or of a county sheriff's office when such official verifies that the report is necessary to conduct an active investigation or prosecution of an alleged intentional false report to the SCR, which is a violation of [Penal Law 240.50\(4\)\(a\)](#).