

Section 168.7 of Title 9 NYCRR is amended to read as follows:

Section 168.7. Confidentiality of [Division for Youth]Office of Children and Family Services records.

(a) Records, [or]files, or information identifying youth [of children]who are or have been under the care or supervision of the [Division for Youth]Office of Children and Family Services (OCFS) may not be disclosed in whole or part to any person, agency or institution, other than [the Division for Youth]OCFS and New York State family courts, with the following exceptions:

(1) Records or pertinent parts thereof must be disclosed pursuant to Supreme Court order as authorized by Social Services Law [article 6,]section 372.

(2) Educational records may be disclosed in accordance with the provisions of and any regulations promulgated pursuant to the Family Educational Rights and Privacy Act and the New York State Education Law[to the extent that, when a child is attending or has attended a school located on the premises of a Division for Youth facility:

- (i) all school records may be visually displayed to a child's parent, in person only;
- (ii) the child's name, date of birth, a list of subjects studied, grades received, credits earned through academic/vocational courses, work experience or cooperative educational experience, record of attendance, last grade level achieved, previous school attended, standardized test scores, academic/vocational assessment results, Regents examination and Regents competency test results, general educational development test results, recommended educational program and grade placement, whether a committee on the handicapped has determined that the child has a handicapping condition, and immunization records only may be forwarded to the principal or guidance counselor of a school to which a child may be sent or desires to attend].

(3) Medical records, including mental health records, may be disclosed consistent with the provisions of and any regulations promulgated pursuant to the Health Insurance Portability and Accountability Act and the New York State Public Health Law[to a physician at the written request of the physician and with the written approval of the child's parent or guardian; however, if the child is over the age of 18 years at the time of the request, only his or her approval shall be necessary, in addition to the physician's request].

(4) Records, or summaries of records, may be disclosed to [the]a probation department[of a Family Court of the State of New York,] on written request for use in accord with [The]Family Court Act[, article 1,] sections 166, 351.1, and [article 7, sections 746(b),]783, or Criminal Procedure Law sections 390.20 and 720.20.

(5) [The division is prohibited from making records available to a county probation department, pursuant to section 372.3 of the Social Services Law.]Nothing in this section shall be deemed to prevent access by a youth's parent or legal guardian to records of such youth where access is otherwise specifically authorized by law.

(6) Information concerning a [child]youth's date of admission, release, revocation of release, and discharge only may be [forwarded]disclosed to [the director of]a New York social [welfare]services district or State or Federal agency on written request, when such information is necessary to enable said district or agency to determine that the [child]youth is under its jurisdiction, thereby enabling it to provide for a [child]youth's welfare and the necessities of life.

(7) Records pertaining to the vital statistics of [children]youth may be disclosed to law enforcement authorities when a [child]youth is absent from an [institution]OCFS placement without proper authorization or has violated a condition of release.

(8) Records may be made available to authorized child [caring]welfare agencies, within and without the State, which have actual custody of [the]a youth previously or currently in OCFS custody and request specific information in writing for the purpose of developing a program or providing services to [meet his needs]the youth. [However, w]When the request is made by an out-of-state child [caring]welfare agency, [the division]OCFS shall request written confirmation, from the juvenile compact administrator for the state in which the requesting agency is located, that the agency is authorized to provide [child care]services or programs to youth within that state and is in good standing. No record shall be made available until such [information]confirmation is received by [the division]OCFS in writing.

(9) [Division]OCFS records shall be made available to the Office of the Attorney General [or his designee]in furtherance of the duties of that office.

(10) Records pertaining to youth[s] referred to [the division]OCFS as a condition of probation [or pursuant to a continuance authorized by section 502 of the Executive Law]shall be made available to the referring court or [its]the relevant probation department upon written request made during the period of referral.

(11) Requests for information from law enforcement authorities.

(i) For purposes of this paragraph, law enforcement authorities shall mean representatives of federal, New York State, or local law enforcement agencies conducting a criminal investigation and United State attorneys, district attorneys, or presentment agencies conducting a criminal investigation or prosecution; provided, however, that law enforcement authorities shall not mean agencies charged with enforcement of federal immigration laws.

(ii) Upon a written request stating that such information is necessary to conduct a criminal investigation or prosecution of an act committed by a youth in OCFS custody, law enforcement authorities shall be provided with information regarding the dates and location(s) of the youth's placement with OCFS. OCFS shall also provide the requesting agency with the relevant incident reports, other appropriate documents, and video determined by OCFS to contain potential evidence of the act.

(iii) If law enforcement authorities are called to an OCFS location in connection with a report made to such authority of a crime committed by a youth at the location, OCFS may provide such law enforcement authorities, upon request, with information regarding the dates and location(s) of the youth's placement with OCFS. If readily available at the time requested, law enforcement may be provided with relevant incident reports, other appropriate documents, and video determined by OCFS to contain potential evidence of the alleged criminal act.

(iv) If law enforcement authorities arrive at an OCFS location seeking information concerning the location of a youth currently or previously in OCFS custody in furtherance of a criminal investigation, OCFS may provide information regarding the dates and location(s) of the youth's placement with OCFS, and the last known community location of a youth in a day placement program or conditionally released.

(v) Prior to providing any information pursuant to subparagraphs (iii) or (iv) of this paragraph, the OCFS administrator on duty or ranking office staff person shall:

(a) visually inspect the badge/photo identification of the law enforcement authority representative(s); and

(b) on an OCFS form, document each representative's full name, law enforcement agency, badge/identification number, work address and phone number.

(vi) Prior to providing any information pursuant to this paragraph, the OCFS administrator on duty or ranking office staff person shall:

(a) contact the Division of Legal Affairs or, if after hours, the administrator on call who will contact the Division of Legal Affairs for authorization to provide the requested information. If the Division of Legal Affairs does not approve the release of information, OCFS shall not provide the requested information unless a judicial subpoena is obtained by the law enforcement authority.

(b) contact the Office of the Ombudsman to give notice of the request.

(vi) Only the information and materials described in this paragraph that are specifically requested by law enforcement authorities may be provided. All information and materials provided to law enforcement must be appropriately redacted by OCFS to prevent disclosure of information prohibited by statute or regulation from being disclosed, as well as the confidentiality of youth not involved in the alleged criminal act. The administrator on duty or ranking office staff member must identify each item provided to law enforcement authorities on an OCFS form. Only copies of records shall be provided, unless there is a court order to provide the original(s). If original materials are provided pursuant to a court order, this will be noted on the OCFS form and a copy will be retained by OCFS.

(12) Records relevant to the provision of services to a youth in OCFS custody by a non-employee of OCFS may be released with the written consent of the youth's parent or guardian or, if the youth is over the age of 18 at the time of the request, the youth's consent.

(b) When requests for records or other information concerning a [child]youth is received by any agent of [the Division for Youth]OCFS, and when such information is not included in the exceptions listed in [paragraphs (1) through (10) of]subdivision (a) of this section, the correct response shall be: "[We are]OCFS is not authorized by law to disclose whether or not any individual was ever under [our]its jurisdiction."

(c) No part of this section shall be construed to prohibit the free exchange of information within [the Division for Youth]OCFS, or between [the division]OCFS and New York State family courts, when the best interest and treatment of the [child]youth is at issue[, nor shall it serve to prohibit]

(d) Youth records may be disclosed for purposes of a bona fide research study[of information], with the approval of the [executive deputy director and the deputy director for research]Commissioner of [the Division for Youth]OCFS[and when guided by the superintendent or director of the institution, agency or facility at which the study is being conducted, with the stipulation], except that the name of and other identifying information of youth[no child] shall not be disclosed [by]to the study group. [In addition a]All such [study groups]researchers shall sign a[n] confidentiality agreement [to this effect]before approval for such study shall be granted.

([d]e) When any [child]youth who has been under the care of [the Division for Youth]OCFS[, according to title II, article 19-G of the Executive Law, reaches the age of 20 years, and a child cared for by the Division for Youth, according to title III, article 19-G of the Executive Law,] reaches the age of 25[1] or has been out of the care of OCFS for 10 years, whichever is longer, all records possessed by [said division]OCFS shall be

[sealed]destroyed, unless required by law to be further retained, and shall not made available to any person unless and shall only be revealed by the division,] pursuant to an order by the Supreme Court of the State of New York, except such records may be made available to the Office of the Attorney General [of the State of New York]in furtherance of the duties of that office.