Department of Children's Services

POLICY

9.5 Access and Release of Confidential Child-Specific Information	
Application: All Department of Children's Services Employees	
Authority: TCA: 33-3-103, 33-3-104; 36-1-125 through 36-1-141, 37-1-153, 37-1-409, 37-1-612, 37-2408, 37-5-105 (3), 37-5-106-107; Health Insurance Portability and Accountability Act (HIPAA) of 1996 (P.L.104-191); DCS Rules and Regulations Regarding Access and Release of Records: 0250-6-1, 0250-07-07, 0250-07-09, 0250-07-11, 0250-07-12; Fair Credit Reporting Act 603(d)	**Standards: COA**: PA-PRG 2
Commissioner:	**Date:**
Original Effective Date: 07/01/00 Current Effective Date: 06/15/23	Supersedes: DCS 9.5 07/26/19 Last Review Date: 06/15/23
Glossary: None	

Policy Statement:
The Department of Children's Services (DCS) ensures that records and information maintained by DCS are confidential and only accessed or released according with State and Federal laws, DCS Rules, Regulations and Policies. The access and release of confidential child-specific information, regardless of media, is limited to individuals, agencies and organizations which demonstrate a "need and right to know" or received written authorization from the child/youth or their legal representative.

Purpose:
To ensure guidelines are established for the release of confidential information. DCS protects the privacy of the children/families in its care while providing access to information to entities that have a "need or right to know."

Procedures:

A. Access to Child/Youth Records

1. Access to confidential records information is restricted and functionally accessible only to authorized individuals as designated by appropriate DCS and private provider management.
2. DCS management identifies staff who are authorized to have access to confidential records in order to perform job specific duties as required by law, regulations, policies and procedures.
3. Authorized private service providers identify employees that are authorized to develop and maintain or to have access to confidential case file records in order to perform job specific duties.
4. Procedures are implemented to ensure privacy and to avoid a conflict of interest for authorized individuals when confidential case record information pertains to them or their relatives.
5. Verification practices include, but are not limited to, the following:
   - **a)** A written request with a date of birth and a photo driver's license or other photo identification;
   - **b)** Agency/private provider identification, credentials or other proof of government/organization status;
   - **c)** A written request on agency/organization letterhead;
   - **d)** A valid court order.
6. DCS manages and complies with State and Federal Laws, DCS Rules and Regulations and Policies, regarding the access or release of child-specific information regardless of media type (e.g., paper, electronic, etc).

B. DCS Policies, Rules and Regulations Governing Record Information

Specific DCS policies and other Rules and Regulations apply regarding the following record series:

1. **Medical Records**
   - **a)** The child/youth's medical records are confidential and not open for inspection by members of the public. Only authorized personnel have access to a child/youth's medical records in accordance with applicable State and Federal Laws, DCS Rules, Regulations, and DCS policies ***20.25, Health Information Records and Access***, and ***20.47-DOE, Access of Medical Records*** that governs health/medical records.
   - **b)** Specific guidelines regarding the disclosure of protected health information (PHI) is in accordance with ***Health Insurance Portability and Accountability Act (HIPAA)*** Federal Law and DCS HIPAA policies.
2. **Educational Records**

Access to educational records (e.g., report cards, transcripts, special education identification sheets and GED certificates, for a child/youth residing in a YDC or private provider agencies, etc.) is handled in accordance with applicable State and Federal Laws, DCS Rules, Regulations, and DCS policy ***9.3-DOE, Youth Education Records*** that governs education records.

3. **Residential Treatment Child/Youth Case Files**
   - **a)** The Residential Treatment Child/Youth Case File for a custodial child/youth is confidential and not open for inspection by members of the public. Only authorized personnel have access to the child/youth's case file.
   - **b)** Any person or entity that is provided access to records under this provision of the policy is required to maintain the records in accordance with State and Federal Laws and DCS Rules and Regulations regarding confidentiality.
4. **Mental Health and Substance Abuse Records**
   The mental health and substance abuse record of children/youth is confidential and not open for inspection by members of the public. Only authorized personnel have access to the child/youth's mental health records in accordance with applicable State and Federal Laws, DCS Rules, Regulations, and DCS policies ***20.25, Health Information Records and Access*** and ***20.47-DOE, Access of Medical Records***.
5. **Finance/Accounting Records**
   Access to child/youth records is in accordance with applicable State and Federal Laws, DCS Rules, Regulations and DCS policies that govern fiscal records.
6. Adoption Records Access to sealed adoption records is in accordance with applicable State and Federal Laws, DCS Rules, and Regulations and the ***Adoption Best Practices Manual.***
7. **Child Protective Services (CPS) Records**
   Access to CPS investigative records regarding specific events or referrals concerning a child/youth or family is in accordance with applicable State and Federal Laws, DCS Rules, Regulations and DCS Policy ***14.15, Confidentiality of Child Protective Services Cases*** that governs CPS records. The name of the referent in a Child Protective Services (CPS) case must not be disclosed under any circumstances.

C. Release of Records

1. **General**:
   - **a)** Access to both open and closed child/youth case records requested through a valid court order or subpoena may be provided, but DCS General Counsel and/or DCS Records Management inspects the court order or subpoena before the records can be released.

b) All other requests (those without a subpoena or court order) are referred to the Grand Region Records Coordinator, who is responsible for ensuring that confidentiality provisions are not violated. Any questions or concerns may be delegated to DCS General Counsel or DCS Records Management to make a determination as to what, if any, records may be released.

c) Judicial, correctional, law enforcement and service providers that have established both a "need and right to know" may have limited access to confidential DCS records as required by State and Federal Laws, DCS Rules, Regulations and Policies.

d) Access to Records by Adults Who Were Previously in DCS Custody:

e) An adult, who was in DCS custody as a child/youth, has a right to request a copy of portions of his or her own file, subject to any exception contained in this policy. S/he has the right to a reasonable explanation and interpretation of the information.

f) Each person who requests and receives a copy of his or her file agrees to sign form ***CS-0684, Confidentiality Agreement*** in which s/he agrees to keep all of their information confidential and not release the information to the public.

g) CPS records must not be released without prior approval from DCS Legal or DCS Records Management.

h) Upon review by DCS Legal, the Team Leader or FSW/JSW/JPO is responsible for the redaction of protected information prior to the records being released to the requesting person(s). This redaction includes all references to the referent in CPS Cases and all other privileged and confidential information pursuant to DCS policies and applicable State and Federal Laws. Releases through the Records Management Division will be reviewed by DCS Legal upon request.

2. **Birth Parent, Guardian, or Foster Parent requesting the Record**:
A birth parent, guardian, or foster parent of a child/youth in custody or risk of custody is allowed to meet with the FSW/JSW/JPO or supervisor assigned to the case and they have the right to a reasonable explanation and interpretation of the records. Refer to ***Guide to Document Sharing for Staff, Foster Parents, Advocates and Mentors.***

D. Local Procedures and Logging System

1. Each office and facility establishes local procedures and creates a logging system to record requests for information on both active and closed files for tracking purposes. The log includes the following information:
    - Name of child/youth;
    - Date of birth;

- Type of request;
- Reason for Request;
- Date of release; and
- Name of person to whom information is released.

2. Written and verbal releases of confidential information from active case files are documented on the appropriate screens or case recordings in ***TFACTS***. Documentation for inactive/closed case (paper) files is documented on a "SignIn/Sign-Out" log maintained in the front of the case file.
3. Controls and logging procedures are reviewed with appropriate personnel in order to prevent the unauthorized or premature release of confidential information.
4. All requirements to establish **local** procedures, protocols or guidelines are documented on form ***CS-0251 Local Administrative Procedures and Instructions***.

E. Exceptions

1. Information considered to be damaging to the child/youth or affecting the safety and security of others, (i.e., medical, psychiatric, psychological information, police or incident reports, etc.), may be withheld from the child/youth, their parent or guardian or any other person requesting the records.
2. DCS is not the authorized records custodian for agencies, providers, etc. DCS only releases records produced by DCS.

F. Violation Sanctions

1. The unauthorized disclosure of certain confidential record information may be punishable as a crime and subject to prosecution.
2. Violation of this policy by DCS personnel may result in disciplinary action, up to and including termination.
3. Violation of this policy by private provider personnel may result in contract termination.

Forms:

CS-0251 Local Administrative Procedures and Instructions

CS-0559, Authorization for Release of Information of HIPAA Protected Health Information TO and FROM the Department of Children's Services and Notification of Release

CS-0684, Confidentiality Agreement

Collateral Documents:

9.3 DOE, Youth Education Records

14.15, Confidentiality of Child Protective Services Cases

20.25, Health Information Records and Access

20.47-DOE, Access of Medical Records

Adoption Best Practices Manual

Guide to Document Sharing for Staff, Foster Parents, Advocates and Mentors

Rules of the TN Department of Children's Services:

- ***Chapter 0250-6-1 - Access to Public Records of the Department of Children's Services***
- ***Chapter 0250-7-9- Classification and Review of Reports of Child Abuse/Neglect and Due Process Procedures for Release of Child Abuse/Neglect Records***
- ***Chapter 0250-7-7- Access to Adoption Records Finalized Prior to 1951 and Access to Records Maintained by TN Children's Home Society***
- ***Chapter 0250-7-11 - Release of Non-Identifying Information from Records of Adoptions and Transmittal of Medical Information Regarding Certain Persons Affected by Adoptions***
- ***Chapter 0250-7-12 - Rules Governing Access to Adoption Records for Adoptions Finalized On and After March 16, 1951***