

§4008. Records; confidentiality; disclosure

1. Confidentiality of records and information. All department records that contain personally identifying information and are created or obtained in connection with the department's child protective activities and activities related to a child while in the care or custody of the department, and all information contained in those records, are confidential and subject to release only under the conditions of subsections 2 and 3.

Within the department, the records are available only to and may be used only by appropriate departmental personnel and legal counsel for the department in carrying out their functions.

Any person who receives department records or information from the department may use the records or information only for the purposes for which that release was intended.

[PL 2007, c. 485, §1 (AMD); PL 2007, c. 485, §2 (AFF).]

1-A. Disclosure. The department may determine that for the purposes of disclosure under this section records are limited to only records created by the department in connection with its duties under this chapter.

[PL 2021, c. 176, §5 (NEW).]

2. Optional disclosure of records. The department may disclose relevant information in the records to the following persons:

A. An agency or person investigating or participating on a team investigating a report of child abuse or neglect when the investigation or participation is authorized by law or by an agreement with the department; [PL 1987, c. 511, Pt. B, §1 (RPR).]

A-1. A law enforcement agency, to the extent necessary for reporting, investigating and prosecuting an alleged crime, the victim of which is a department employee, an employee of the Attorney General's Office, an employee of any court or court system, a person mandated to report suspected abuse or neglect, a person who has made a report to the department, a person who has provided information to the department or an attorney, guardian ad litem, party, participant, witness or prospective witness in a child protection proceeding; [PL 2005, c. 300, §3 (NEW).]

A-2. An administrator of a social media service, to the extent authorized by a court for reporting, investigating or removing a threat or serious intimidation attempt directed against an employee of the department, an employee of the Attorney General's office, a guardian ad litem or an officer of any court or court system. The information remains confidential and the social media service may not redisclose any of the information provided by the department. For the purposes of this subsection, "social media service" means an electronic medium or service through which users create, share and view user-generated content; [PL 2021, c. 148, §1 (NEW).]

B. [PL 1983, c. 327, §3 (RP).]

C. A physician treating a child whom he reasonably suspects may be abused or neglected; [PL 1979, c. 733, §18 (NEW).]

D. A child named in a record who is reported to be abused or neglected, or the child's parent or custodian, or the subject of the report, with protection for identity of reporters and other persons when appropriate; [PL 1987, c. 744, §3 (AMD).]

D-1. A parent, custodian or caretaker of a child when the department believes the child may be at risk of harm from the person who is the subject of the records or information, with protection for identity of reporters and other persons when appropriate; [PL 2005, c. 300, §4 (NEW).]

D-2. A party to a child protection proceeding, when the records or information is relevant to the proceeding, with protection for identity of reporters and other persons when appropriate; [PL 2005, c. 300, §4 (NEW).]

E. A person having the legal responsibility or authorization to evaluate, treat, educate, care for or supervise a child, parent or custodian who is the subject of a record, or a member of a panel appointed by the department to review child deaths and serious injuries, or a member of the Domestic Abuse Homicide Review Panel established under Title 19-A, section 4013, subsection 4. This includes a member of a treatment team or group convened to plan for or treat a child or family that is the subject of a record. This may also include a member of a support team for foster parents, if that team has been reviewed and approved by the department; [PL 2005, c. 300, §5 (AMD).]

E-1. [PL 2007, c. 371, §3 (RP).]

F. Any person engaged in bona fide research, provided that no personally identifying information is made available, unless it is essential to the researcher and the commissioner or the commissioner's designee gives prior approval. If the researcher desires to contact a subject of a record, the subject's consent shall be obtained by the department prior to the contact; [PL 1989, c. 270, §2 (RPR).]

G. Any agency or department involved in licensing or approving homes for, or the placement of, children or dependent adults, with protection for identity of reporters and other persons when appropriate; [PL 1989, c. 270, §3 (RPR).]

H. Persons and organizations pursuant to Title 5, section 9057, subsection 6, and pursuant to chapter 857; [PL 1989, c. 270, §4 (RPR); PL 1989, c. 502, Pt. A, §76 (RPR); PL 1989, c. 878, Pt. A, §62 (RPR).]

I. The representative designated to provide child welfare services by the tribe of an Indian child as defined by the federal Indian Child Welfare Act, 25 United States Code, Section 1903, or a representative designated to provide child welfare services by an Indian tribe of Canada; [PL 2007, c. 140, §5 (AMD).]

J. A person making a report of suspected abuse or neglect. The department may only disclose that it has not accepted the report for investigation, unless other disclosure provisions of this section apply; [PL 2015, c. 194, §1 (AMD); PL 2015, c. 198, §1 (AMD).]

K. The local animal control officer or the animal welfare program of the Department of Agriculture, Conservation and Forestry established pursuant to Title 7, section 3902 when there is a reasonable suspicion of animal cruelty, abuse or neglect. For purposes of this paragraph, "cruelty, abuse or neglect" has the same meaning as provided in Title 34-B, section 1901, subsection 1, paragraph B; [PL 2015, c. 494, Pt. A, §21 (AMD).]

L. A person, organization, employer or agency for the purpose of carrying out background or employment-related screening of an individual who is or may be engaged in:

(1) Child-related activities or employment; or

(2) Activities or employment relating to adults with intellectual disabilities, autism, related conditions as set out in 42 Code of Federal Regulations, Section 435.1010 or acquired brain injury; and [PL 2015, c. 494, Pt. A, §22 (RPR).]

M. The personal representative of the estate of a child named in a record who is reported to be abused or neglected. [PL 2015, c. 494, Pt. A, §23 (NEW).]
[PL 2021, c. 148, §1 (AMD).]

3. Mandatory disclosure of records. The department shall disclose relevant information in the records to the following persons:

A. The guardian ad litem of a child, appointed pursuant to section 4005, subsection 1; [PL 2005, c. 300, §8 (AMD).]

- A-1. The court-appointed guardian ad litem or attorney of a child who is the subject of a court proceeding involving parental rights and responsibilities, grandparent visitation, custody, guardianship or involuntary commitment. The access of the guardian ad litem or attorney to the records or information under this paragraph is limited to reviewing the records in the offices of the department. Any other use of the information or records during the proceeding in which the guardian ad litem or attorney is appointed is governed by paragraph B; [PL 2009, c. 38, §1 (AMD).]
- B. A court on its finding that access to those records may be necessary for the determination of any issue before the court or a court requesting a home study from the department pursuant to Title 18-C, section 9-304 or Title 19-A, section 905. Access to such a report or record is limited to counsel of record unless otherwise ordered by the court. Access to actual reports or records is limited to in camera inspection, unless the court determines that public disclosure of the information is necessary for the resolution of an issue pending before the court; [PL 2017, c. 402, Pt. C, §60 (AMD); PL 2019, c. 417, Pt. B, §14 (AFF).]
- C. A grand jury on its determination that access to those records is necessary in the conduct of its official business; [PL 1983, c. 327, §4 (AMD); PL 1983, c. 470, §12 (AMD).]
- D. An appropriate state executive or legislative official with responsibility for child protection services, provided that no personally identifying information may be made available unless necessary to that official's functions; [PL 2001, c. 439, Pt. X, §2 (AMD).]
- E. The protection and advocacy agency for persons with disabilities, as designated pursuant to Title 5, section 19502, in connection with investigations conducted in accordance with Title 5, chapter 511. The determination of what information and records are relevant to the investigation must be made by agreement between the department and the agency; [PL 1991, c. 630, §2 (AMD).]
- F. The Commissioner of Education when the information concerns teachers and other professional personnel issued certificates under Title 20-A, persons employed by schools approved pursuant to Title 20-A or any employees of schools operated by the Department of Education; [PL 2001, c. 696, §18 (AMD).]
- G. The prospective adoptive parents. Prior to a child being placed for the purpose of adoption, the department shall comply with the requirements of Title 18-C, section 9-304, subsection 3 and section 8205; [PL 2017, c. 402, Pt. C, §61 (AMD); PL 2019, c. 417, Pt. B, §14 (AFF).]
- H. Upon written request, a person having the legal authorization to evaluate or treat a child, parent or custodian who is the subject of a record. This includes a member of a treatment team or group convened to plan for or treat a child or family that is the subject of a record; [PL 2003, c. 673, Pt. Z, §3 (AMD).]
- I. Any government entity that needs such information in order to carry out its responsibilities under law to protect children from abuse and neglect. For purposes of this paragraph, "government entity" means a federal entity, a state entity of any state, a local government entity of any state or locality or an agent of a federal, state or local government entity; [PL 2007, c. 371, §4 (AMD).]
- J. To a juvenile court when the child who is the subject of the records has been brought before the court pursuant to Title 15, Part 6; [PL 2013, c. 293, §1 (AMD).]
- K. A relative or other person whom the department is investigating for possible custody or placement of the child; [PL 2015, c. 381, §1 (AMD).]
- L. To a licensing board of a mandated reporter, in the case of a mandated reporter under section 4011-A, subsection 1 who appears from the record or relevant circumstances to have failed to make a required report. Any information disclosed by the department personally identifying a licensee's

client or patient remains confidential and may be used only in a proceeding as provided by Title 5, section 9057, subsection 6; and [PL 2015, c. 381, §2 (AMD).]

M. Law enforcement authorities for entry into the National Crime Information Center database of the Federal Bureau of Investigation and to a national information clearinghouse for missing and exploited children operated pursuant to 42 United States Code, Section 5773(b). Information disclosed pursuant to this paragraph is limited to information on missing or abducted children or youth that is required to be disclosed pursuant to 42 United States Code, Section 671(a)(35)(B). [PL 2015, c. 381, §3 (NEW).]

[PL 2017, c. 402, Pt. C, §§60, 61 (AMD); PL 2019, c. 417, Pt. B, §14 (AFF).]

3-A. Confidentiality. The proceedings and records of the child death and serious injury review panel created in accordance with section 4004, subsection 1, paragraph E are confidential and are not subject to subpoena, discovery or introduction into evidence in a civil or criminal action. The commissioner shall disclose conclusions of the review panel upon request, but may not disclose data that is otherwise classified as confidential.

[PL 1993, c. 294, §4 (NEW).]

4. Unlawful dissemination; penalty. A person is guilty of unlawful dissemination if the person knowingly disseminates records that are determined confidential by this section, in violation of the mandatory or optional disclosure provisions of this section. Unlawful dissemination is a Class E crime that, notwithstanding Title 17-A, section 1604, subsection 1, paragraph E, is punishable by a fine of not more than \$500 or by imprisonment for not more than 30 days.

[PL 2019, c. 113, Pt. C, §67 (AMD).]

5. Retention of unsubstantiated child protective services records. Except as provided in this subsection, the department shall retain unsubstantiated child protective services case records for no more than 5 years following a finding of unsubstantiation and then expunge unsubstantiated case records from all departmental files or archives unless a new referral has been received within the 5-year retention period. An expunged record or unsubstantiated record that should have been expunged under this subsection may not be used for any purpose, including admission into evidence in any administrative or judicial proceeding.

[PL 2017, c. 472, §1 (AMD).]

6. Disclosing information; establishment of fees; rules. The department may charge fees for searching and disclosing information in its records as provided in this subsection.

A. The department may charge fees for the services listed in paragraph B to any person except the following:

- (1) A parent in a child protection proceeding, an attorney who represents a parent in a child protection proceeding or a guardian ad litem in a child protection proceeding when the parent, attorney or guardian ad litem requests the service for the purposes of the child protection proceeding;
- (2) An adoptive parent or prospective adoptive parent who requests information in the department's records relating to the child who has been or might be adopted;
- (3) A person having the legal authorization to evaluate or treat a child, parent or custodian who is the subject of a record, including a member of a treatment team or group convened to plan for or treat a child or family that is the subject of a record; the information in the record must be requested for the purpose of evaluating or treating the child, parent or custodian who is the subject of the record;
- (4) Governmental entities of this State that are not engaged in licensing; and

(5) Governmental entities of any county or municipality of this State that are not engaged in licensing.

An order by a court for disclosure of information in records pursuant to subsection 3, paragraph B must be deemed to have been made by the person requesting that the court order the disclosure. [PL 2015, c. 194, §4 (AMD).]

B. The department may charge fees for the following services:

- (1) Searching its records to determine whether a particular person is named in the records;
- (2) Receiving and responding to a request for disclosure of information in department records, whether or not the department grants the request; and
- (3) Disclosing information in department records. [PL 2015, c. 194, §4 (AMD).]

C. The department shall adopt rules governing requests for the services listed in paragraph B. Those rules may provide for a mechanism for making a request, the information required in making a request, the circumstances under which requests will be granted or denied and any other matter that the department determines necessary to efficiently respond to requests for disclosure of information in the records. The rules must establish a list of specified categories of activities or employment for which the department may provide information for background or employment-related screening pursuant to subsection 2, paragraph L. Rules adopted pursuant to this paragraph are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A. [PL 2015, c. 194, §4 (AMD).]

D. The department shall establish a schedule of fees by rule. The schedule of fees may provide that certain classes of persons are exempt from the fees, and it may establish different fees for different classes of persons. All fees collected by the department must be deposited in the General Fund. Rules adopted pursuant to this paragraph are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A. [PL 2003, c. 673, Pt. W, §1 (NEW).]

E. A governmental entity that is engaged in licensing may charge an applicant for the fees imposed on it by the department for searching and disclosing information in its records. [PL 2015, c. 194, §4 (AMD).]

F. This subsection may not be construed to permit or require the department to make a disclosure in any particular case. [PL 2003, c. 673, Pt. W, §1 (NEW).]

[PL 2015, c. 194, §4 (AMD).]

7. Appeal of denial of disclosure of records. A parent, legal guardian, custodian or caretaker of a child who requests disclosure of information in records under subsection 2 and whose request is denied may request an administrative hearing to contest the denial of disclosure. The request for hearing must be made in writing to the department. The department shall conduct hearings under this subsection in accordance with the requirements of Title 5, chapter 375, subchapter 4. The issues that may be determined at hearing are limited to whether the nondisclosure of some or all of the information requested is necessary to protect the child or any other person. The department shall render after hearing without undue delay a decision as to whether some or all of the information requested should be disclosed. The decision must be based on the hearing record and rules adopted by the commissioner. The decision must inform the requester that the requester may file a petition for judicial review of the decision within 30 days of the date of the decision. The department shall send a copy of the decision to the requester by regular mail to the requester's most recent address of record.

[PL 2015, c. 501, §2 (NEW).]

SECTION HISTORY

PL 1979, c. 733, §18 (NEW). PL 1983, c. 327, §§3-5 (AMD). PL 1983, c. 354, §§1,2 (AMD). PL 1983, c. 470, §§12,13 (AMD). PL 1983, c. 783, §4 (AMD). PL 1985, c. 495, §18 (AMD).

PL 1985, c. 506, §§A43-45 (AMD). PL 1985, c. 739, §§5,6 (AMD). PL 1987, c. 511, §§A3,B1 (AMD). PL 1987, c. 714, §§5-7 (AMD). PL 1987, c. 744, §§3-7 (AMD). PL 1989, c. 118 (AMD). PL 1989, c. 270, §§2-5 (AMD). PL 1989, c. 483, §A33 (AMD). PL 1989, c. 502, §§A76,77,D18 (AMD). PL 1989, c. 700, §A89 (AMD). PL 1989, c. 857, §58 (AMD). PL 1989, c. 878, §§A62,63 (AMD). PL 1991, c. 630, §§2-4 (AMD). PL 1993, c. 294, §§3, 4 (AMD). PL 1993, c. 686, §8 (AMD). PL 1993, c. 686, §13 (AFF). PL 1995, c. 391, §2 (AMD). PL 1995, c. 694, §§D38,39 (AMD). PL 1995, c. 694, §E2 (AFF). PL 2001, c. 439, §X2 (AMD). PL 2001, c. 696, §§17-20 (AMD). PL 2003, c. 673, §§W1,Z2-4 (AMD). PL 2005, c. 300, §§2-9 (AMD). PL 2007, c. 140, §§5-7 (AMD). PL 2007, c. 335, §1-3 (AMD). PL 2007, c. 335, §5 (AFF). PL 2007, c. 371, §§3-6 (AMD). PL 2007, c. 473, §1 (AFF). PL 2007, c. 485, §1 (AMD). PL 2007, c. 485, §2 (AFF). PL 2009, c. 38, §1 (AMD). PL 2011, c. 657, Pt. W, §5 (REV). PL 2013, c. 293, §§1-3 (AMD). PL 2015, c. 194, §§1-4 (AMD). PL 2015, c. 198, §§1-3 (AMD). PL 2015, c. 381, §§1-3 (AMD). PL 2015, c. 494, Pt. A, §§21-23 (AMD). PL 2015, c. 501, §§1, 2 (AMD). PL 2017, c. 402, Pt. C, §§60, 61 (AMD). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2017, c. 472, §1 (AMD). PL 2019, c. 113, Pt. C, §67 (AMD). PL 2019, c. 417, Pt. B, §14 (AFF). PL 2021, c. 148, §1 (AMD). PL 2021, c. 176, §5 (AMD).

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