

6.4 Confidentiality of and Access to Departmental Adoption Records Effective 5/3/02

LEGAL BASE

Title 18-A Article IX Adoption §9-310 provides that notwithstanding any other provision of law, all Probate Court records relating to any adoption decreed on or after August 8, 1953 are confidential. The Probate Court shall keep records of those adoptions segregated from all other court records. If a judge of probate determines that examination of records pertaining to a particular adoption is proper, the judge may authorize that examination by specified persons, authorize the register of probate to disclose to specified persons any information contained in the records by letter, certificate or copy of the record or authorize a combination of both examination and disclosure.

Upon petition of the Probate Court, any medical or genetic information in the court records relating to an adoption must be made available to the adoptee upon reaching the age of 18, the adoptee's descendants, adoptive parents or legal guardian.

22 MRSA §4008 provides that all Department records which 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 of Human Services are confidential and subject to release only under the conditions set forth in the law. The law provides for either optional or mandatory disclosure of relevant information in records. Refer to 22 MRSA 4008.3.G for the mandatory disclosure to prospective adoptive parent[s]. Optional disclosure provisions includes 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 the identity of reporters and other persons when appropriate.

PHILOSOPHICAL BASE

It is the position of the Department of Human Services that records of its clients who were adopted on or after August 8, 1953 will be confidential and identifying information will not be provided to a member of the adoption triad (the adoptee, the adoptive parents, or the birth parents). Non-identifying medical and genetic information about an adopted person or a birth parent may be provided to a member of the adoption triad.

However, for clients who were adopted prior to August 8, 1953, where the client may have access to identifying information through the probate court whose adoption records are public, that identifying information may be given to a member of the triad under circumstances set forth below. Clients also have the option to petition the Probate Court to request the Judge allow identifying information to be released from the Probate Court's records.

PRACTICE STANDARDS

- Identifying information may be provided only if the requesting party provides proof of his or her identity and relationship to the adoptee or other member of the triad.
- No identifying information will be provided if doing so would appear to place another member of the adoption triad at risk.
- Sensitive information may be withheld from any party except the subject of the information, and that information may be withheld from the subject if providing the information is likely to result in harm to that person or anyone else. Such decisions shall rest at the discretion of the Bureau Director or designee. Sensitive information is defined as unverified, negative information or observations about an individual's behavior, physical description, other personal characteristics, or verified private information about an individual and which that individual has reasonable expectation of privacy and other persons have no reasonable need to know.
- Records or information made confidential by operation of other rules or laws shall not be disclosed under this policy.
- A person seeking records or information, which did not originate with the Department will be referred to the primary source of the records or information.
- Independent adoption studies done pursuant to Title 18-A Article IX Adoption section 9-304, and information collected in preparation for the study, are considered part of the probate court records. Therefore, they are subject to the jurisdiction of the probate court under Title 18-A Article IX Adoption section 9-310, if the adoption occurred after August 8, 1953. Such records may be released only on the order of the probate court.
- Information released pursuant to this policy and 22 MRSA 4008 shall not contain identifying information about any reporters of suspected child abuse and/or neglect.
- Information released pursuant to this policy and 22 MRSA 4008 shall not contain any sensitive information about foster parents, other caretakers or other family members.

Disclosure of information from the Department's adoption records pursuant to this policy may be provided upon request, but only as staff or private contracted resources permit. If the Department is unable to assign staff to respond to requests for information because of priority of other tasks or does not have a contract that provides this service, the Department will inform the person in a timely fashion.