

8.2 Determining Access to the Department's Records **Effective 2/1/02**

INTRODUCTION

All Department records which contain personally identifying information created or obtained in connection with the Department's child protection activities are confidential and subject to release only if provided for under the child welfare statute 22 M.R.S.A. §4008. The statute divides disclosure of those records into two categories; mandatory and optional. The release of records to children, their parents or custodians falls within the optional disclosure provision. These guidelines set forth the considerations necessary to determine when to provide a child named in the record, their parent or their custodian access to these records and how that access shall be provided. The intent of this policy is to provide the framework for thoughtful analysis and to attempt to insure consistent practice throughout the districts.

Staff will get any request for record access in writing (including a signature) from the client whenever possible and reasonable. Staff will also take steps to confirm the requesting person's identity.

LEGAL BASE

22 M.R.S.A. §4008. 2.D. provides: The Department may disclose relevant information in the record to a child named in a record who is reported to be abused or neglected or the child's parent or custodian . . . with protection for identity of reporters and other persons when appropriate.

PROCEDURES

The child who is the subject of the record, their parent or their custodian shall have access to the record **except where there are compelling reasons not to allow that access**. To the extent that the record can be redacted to address the compelling reasons/concerns it should be made available in a redacted form.

Compelling Reasons requiring heightened consideration include:

1. Documented violence within the "family" configuration that places a child, parent or third party at risk of physical harm if the record or a portion of it is released.
2. Documented emotional abuse within the family that places a child, the parent or a third party at risk of emotional abuse if the record or a portion of it is released.
3. Marital Status: If the parents are involved in or will be involved in a divorce proceeding and are planning to use the Department's record for that purpose the record should not be released absent court order. Parents that are separated or divorced where the record contains information that would be embarrassing or compromising to the parent not making the request.

Information in the record that should be redacted prior to providing access:

1. Information in the records made confidential by statute or Federal regulation, i.e.
 - Substance abuse evaluations/treatment records to any one other than patient
 - Police reports regarding ongoing investigations
 - Non-conviction data
 - AMHI/BMHI records – only to patient
 - HIV testing results
 - Probate Court records re adoptions
2. Information in the record regarding a confidential reporter
3. Information in the record that if disclosed would in high probability place the child(ren) who are subject of the record or the parent at risk of harm both emotional and physical.
4. Information in the record regarding 3rd parties or another parent that would violate privacies if shared or create a risk of harm. i.e.
 - information regarding ex-spouses of their families
 - information regarding relatives who might have been considered for placement
 - evaluations requested by someone other than patient

Procedure:

1. When a parent or a child requests access to the record the caseworker shall contact the parent and acknowledge the request within 14 days if there is an assigned caseworker. If the record requested is not an open case, the PA or supervisor will assign a caseworker.
2. The caseworker with supervisory consultation and approval shall then review the records to determine if any information should be redacted.
3. The caseworker should, within 30 days, of the request for access of the record contact the parent to set up an appointment for the parent or child to review at the Department's office.
4. The caseworker, or a representative of the Department, shall remain with the parent or child while they review the record to address any questions.
5. If a parent or child requests a copy of any portion of the record, the caseworker/supervisor will consider the request to determine if a copy of the request can be released absent harm to the child, parent or 3rd party. In determining whether to make copies of all or a portion of the record, consideration should be given as to whether a parent is likely to keep the copy confidential. In any event, all copies of records should be stamped CONFIDENTIAL FURTHER RELEASE IS A VIOLATION OF TITLE 22 Section 4008 AND CONSTITUTES A CLASS E CRIME.