



**Administrative Policies and Procedures: 9.5**

<b>Subject:</b>	<b>Access and Release of Confidential Child-Specific Information</b>
<b>Authority:</b>	TCA 33-3-103, 33-3-104; 36-1-125 through 36-1-141, 37-1-153, 37-1-409, 37-1-612, 37-2-408, 37-5-105(3), 37-5-106-107; <i>Health Insurance Portability and Accountability Act (HIPAA) of 1996 (P.L. 104-191)</i> ; <i>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</i>
<b>Standards:</b>	<b>ACA:</b> 4-JCF-6F-01, 4-JCF-6F-06; <b>DCS Practice Model Standard:</b> 7-102 A and 8-306
<b>Application:</b>	All Department of Children's Services Employees
<b>Policy Statement:</b>	
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, will be 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.	
<b>Purpose:</b>	
To ensure guidelines are established for the release of confidential information. DCS will protect the privacy of the children/families in its care while providing access to information to entities that have a "need or right to know."	
<b>Procedures:</b>	
<b>A. Access to child/youth records</b>	<ol style="list-style-type: none"> <li>1. Access to confidential records information will be restricted and functionally accessible <u>only</u> to authorized individuals as designated by appropriate DCS and private provider management.</li> <li>2. Each DCS Director, Regional Administrator, and Youth Development Center (YDC) Superintendent will identify DCS employees (e.g., Records Coordinator/Clerk, Family Service Worker (FSW), Team Coordinator (TC), or other designated personnel, etc.) who are authorized to have access to confidential records in order to perform job specific duties as required by law, regulations, policies and procedures.</li> <li>3. Authorized private service providers will 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.</li> <li>4. Procedures will be implemented to ensure privacy and to avoid a conflict of interest for authorized individuals when confidential case record information</li> </ol>

	<p>pertains to them or their relatives.</p> <ol style="list-style-type: none"> <li>5. Verification practices include, but are not limited to, the following:             <ol style="list-style-type: none"> <li>a) A signed authorization with a social security number or photo driver's license;</li> <li>b) Agency/private provider identification, credentials or other proof of government/organization status;</li> <li>c) A written request on agency/organization letterhead;</li> <li>d) A valid court order;</li> <li>e) Verification of telephone requests using a callback business telephone number;</li> <li>f) Verification of electronic mail address by calling requestor's telephone number, confirming employment, and requesting to be transferred to the specific individual who made the request; and</li> <li>g) Verification of fax requests by reviewing imprint origin fax number.</li> </ol> </li> <li>6. DCS will manage and comply 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, microfilm, etc.).</li> </ol>
<p><b>B. DCS Policies, Rules and Regulations governing record information</b></p>	<p>Specific DCS policies and other Rules and Regulations will apply regarding the following record series:</p> <ol style="list-style-type: none"> <li><b>1. Medical Records</b> 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 <a href="#">20.25, Health Information Records and Access</a>, and <a href="#">20.47, Access of Medical Records-DOE</a> that governs health/medical records.</li> <li><b>2. Specific guidelines regarding the disclosure of protected health information (PHI) will be in accordance with <i>Health Insurance Portability and Accountability Act (HIPAA)</i> Federal Law and DCS HIPAA policies.</b></li> <li><b>3. Educational Records</b> 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.) will be handled in accordance with applicable State and Federal Laws, DCS Rules, Regulations, and DCS policy <a href="#">9.3, Student Education Records-DOE</a> that governs education records.</li> <li><b>4. Residential Treatment Child/Youth Case Files</b> <ol style="list-style-type: none"> <li>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. The child/youth's case file is the property of DCS and neither the</li> </ol> </li> </ol>

	<p>child/youth nor his/her parent or guardian has the authority to release this information.</p> <ul style="list-style-type: none"> <li>b) DCS utilizes any information it acquires in order to provide services for the child/youth.</li> <li>c) DCS may release information to a person or entity that may be providing services to the child/youth.</li> <li>d) Any person or entity that is provided access to records under this provision of the policy will be required to maintain the records in accordance with State and Federal Laws and DCS Rules and Regulations regarding confidentiality.</li> </ul> <p><b>5. Mental Health and Substance Abuse Records</b></p> <p>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 <a href="#">20.25, Health Information Records and Access</a> and <a href="#">20.47, Access of Medical Records-DOE</a>.</p> <p><b>6. Adoption Records</b></p> <p>Access to sealed adoption records are in accordance with applicable State and Federal Laws, DCS Rules, and Regulations and the <a href="#">Adoption Best Practice Manual</a> that governs adoption records.</p> <p><b>7. Family Case Files</b></p> <p>Access to Family Case Files regarding the child/youth and their family’s background and health history will be provided, in a timely manner, to the resource parent and handled in accordance with applicable State and Federal Laws, DCS Rules, Regulations, DCS policy <a href="#">20.25, Health Information Records and Access</a> and the <i>Foster Parents’ Bill of Rights</i>.</p> <p><b>8. Child Protective Services (CPS) Records</b></p> <p>Access to CPS investigative records regarding specific events or referrals concerning a child/youth or family are in accordance with applicable State and Federal Laws, DCS Rules, Regulations and DCS Policy <a href="#">14.13, Confidentiality of Child Protective Services Cases and Information</a> that governs CPS records. The name of the <u>referent</u> in a Child Protective Services (CPS) case <u>must not be disclosed</u> under any circumstances.</p> <p><b>9. Finance/Accounting Records</b></p> <p>Access to child/youth records are in accordance with applicable State and Federal Laws, DCS Rules, Regulations and DCS policies that govern fiscal records.</p>
<p><b>C. Release of records</b></p>	<p><b>1. General:</b></p> <ul style="list-style-type: none"> <li>a) Access to both open and closed child/youth case records requested is through a valid court order.</li> </ul>

	<ul style="list-style-type: none"><li>b) Access to both open and closed child/youth case records requested through a valid subpoena may be provided, but DCS Legal and/or DCS Records Management will inspect the subpoena before the records can be released.</li><li>c) All other requests (those without a subpoena or court order) will be referred to the Regional Records Coordinator, who will be responsible for ensuring that confidentiality provisions are not violated. Any questions or concerns may be delegated to DCS Legal or DCS Records Management to make a determination as to what, if any, records may be released.</li><li>d) 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.</li></ul> <p><b>2. Access to Records by Adults Who Were Previously in DCS Custody:</b></p> <ul style="list-style-type: none"><li>a) An adult, who was in DCS custody as a child/youth, has a limited right of access to examine, make notes, and request a copy of portions of their own file and have the right to a reasonable explanation and interpretation of the information.</li><li>b) They may also request to have another individual present during the review.</li><li>c) Form <b>CS-0559 Authorization for Release of Child Specific Information and HIPPA Protected Health Information</b> is completed which includes the purpose of the review and the specific information for review. Arrangements are made to have the record reviewed in the presence of authorized staff during normal business hours.</li><li>d) Each person who requests and receives a copy of portions of their file will agree to sign form <b>CS-0684, Confidentiality Agreement</b> in which they agree to keep all of their information confidential and not release the information to the public.</li><li>e) CPS records must not be released without prior approval from DCS Legal or DCS Records Management.</li><li>f) Upon review by DCS Legal, the Team Leader or FSW will be responsible for the redaction of protected information prior to the records released to the requesting person(s). This redaction will include all references to the referent in CPS Cases and all other confidential information pursuant to DCS policies.</li></ul> <p><b>2. Birth Parent, Guardian, Surrogate, or Resource Parent requesting the Record:</b></p> <p>A birth parent, guardian, surrogate, or resource parent of a child/youth in custody or risk of custody is allowed to meet with the FSW or supervisor assigned to the case and they will have the right to a reasonable explanation and interpretation of the records.</p>
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<p><b>D. Local procedures and logging system</b></p>	<ol style="list-style-type: none"> <li>1. Each office and facility will establish local procedures and create a logging system to record requests for information on both active and closed files for tracking purposes. The log will include the following information:             <ol style="list-style-type: none"> <li>a) Name of child/youth;</li> <li>b) Social Security Number;</li> <li>c) Date of birth;</li> <li>d) Type of request;</li> <li>e) Reason for Request;</li> <li>f) Date of release; and</li> <li>g) Name of person to whom information is released.</li> </ol> </li> <li>2. Written and verbal releases of confidential information from active case files are documented on the appropriate screens or case recordings in <b>TFACTS</b>. Documentation for inactive/closed case (paper) files is documented on a "Sign-In/Sign-Out" log maintained in the front of the case file.</li> <li>3. Controls and logging procedures are reviewed with appropriate personnel in order to prevent the unauthorized or premature release of confidential information.</li> <li>4. All requirements to establish <u>local</u> procedures, protocols or guidelines are documented on form <b>CS-0251 Local Administrative Procedures and Instructions</b>.</li> </ol>
<p><b>E. Exceptions</b></p>	<ol style="list-style-type: none"> <li>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.</li> <li>2. All records, reports and information that are <u>not written</u> or produced by DCS or a private provider agency will not be automatically released as part of DCS' files.</li> </ol>
<p><b>F. Fees</b></p>	<ol style="list-style-type: none"> <li>1. A reasonable fee is assessed when information that is contained in child/youth case files is reproduced or printed for release to a requester.             <ul style="list-style-type: none"> <li>◆ <b>Note:</b> As of the effective date of this policy, DCS charges \$ .15 cents per single-sided page and \$ .20 cents per double-sided page. (Refer to <b>DCS Rules and Regulations - Chapter 0250-6-1</b> for additional information.)</li> </ul> </li> <li>2. The assessing and collection of such fees will be in accordance with DCS fiscal policies and procedures that govern fiscal matters.</li> <li>3. The fees may be waived at the discretion of DCS management.</li> </ol>

<b>G. Appeal process</b>	<ol style="list-style-type: none"><li>1. Individuals and agencies, that believe they have demonstrated a “need and right to know”, and are denied access to confidential record information by authorized personnel, may appeal within fifteen (15) days to the appropriate Director, Regional Administrator, YDC Superintendent, or authorized designee. Their determination to approve or modify the decision will be final.</li><li>2. The appropriate Deputy Commissioner or Executive Director will receive written notification of the appeal.</li></ol>
<b>H. Violation sanctions</b>	<ol style="list-style-type: none"><li>1. The unauthorized disclosure of certain confidential record information may be punishable as a crime and subject to prosecution.</li><li>2. Violation of this policy by DCS personnel may result in disciplinary action, up to and including termination.</li><li>3. Violation of this policy by private provider personnel may result in contract termination.</li></ol>

<b>Forms:</b>	<p><a href="#"><u>CS-0251 Local Administrative Procedures and Instructions</u></a> <a href="#"><u>CS-0559, Authorization for Release of Child-Specific Information from the Tennessee Department of Children’s Services and Contract Service Providers</u></a> <a href="#"><u>CS-0684, Confidentiality Agreement</u></a></p>
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<p><b>Collateral documents:</b></p>	<p><a href="#"><u>9.3, Student Education Records</u></a></p> <p><a href="#"><u>14.13, Confidentiality of Child Protective Services Cases and Information</u></a></p> <p><a href="#"><u>20.25, Health Information Records and Access</u></a></p> <p><a href="#"><u>20.47, Access of Medical Records</u></a></p> <p><a href="#"><u>Adoptions Best Practice Manual</u></a></p> <p><b><u>Rules of the TN Department of Children's Services:</u></b></p> <ul style="list-style-type: none"><li>◆ <a href="#"><u>Chapter 0250-6-1 - Access to Public Records of the Department of Children's Services</u></a></li><li>◆ <a href="#"><u>Chapter 0250-7-9- – Classification and Review of Reports of Child Abuse/Neglect and Due Process Procedures for Release of Child Abuse/Neglect Records</u></a></li><li>◆ <a href="#"><u>Chapter 0250-7-7- Access to Adoption Records Finalized Prior to 1951 and Access to Records Maintained by TN Children's Home Society</u></a></li><li>◆ <a href="#"><u>Chapter 0250-7-11 - Release of Non-Identifying Information from Records of Adoptions and Transmittal of Medical Information Regarding Certain Persons Affected by Adoptions</u></a></li><li>◆ <a href="#"><u>Chapter 0250-7-12 - Rules Governing Access to Adoption Records for Adoptions Finalized On and After March 16, 1951</u></a></li></ul>
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