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Members of the Arizona Legislature

The Honorable Janet Napolitano, Governor

Ms. Tracy Wareing, Director
Arizona Department of Economic Security

Transmitted herewith is a report of the Auditor General, a Questions-and-Answers Document on the Department of Economic Security, Division of Children, Youth and Families, Child Protective Services—Confidentiality of CPS Information. The document was prepared pursuant to and under the authority vested in the Auditor General by Arizona Revised Statutes §41-1966.

Our questions-and-answers documents were created to provide answers to multiple questions on a particular subject area. We hope that these questions-and-answers documents will fill a need and provide you with timely and useful information on topics of particular interest.

My staff and I will be pleased to discuss or clarify items in this document.

This document will be released to the public on October 25, 2007.

Sincerely,

Debbie Davenport
Auditor General

Enclosure

QUESTIONS and ANSWERS

Summary

This document answers five questions about the dissemination of confidential CPS information. There are several state and federal laws that govern the release of confidential CPS information. These laws allow certain entities and individuals to access CPS information under limited circumstances. Generally, those who request confidential CPS information must fill out a form and submit it to CPS for processing. CPS is required to provide the information or an explanation for why the request cannot be honored within 30 days. State law requires that legislative requests to review confidential CPS information be arranged within 10 working days.



2007

Confidentiality of CPS Information

Question 1: What state and federal laws govern the confidentiality of CPS information?

The principal state and federal laws governing the confidentiality of CPS information are Arizona Revised Statutes §8-807 and the federal Child Abuse Prevention and Treatment Act.

Arizona Revised Statutes (A.R.S.) §8-807 is the primary state law that outlines who can access confidential CPS information and under what circumstances they may do so. A.R.S. §8-807 also fulfills a federal requirement that states enact a law and state-wide program relating to child abuse and neglect that include methods to preserve the confidentiality of all records in order to protect the rights of the child and of the child's parents or guardians.

The key federal legislation addressing child abuse and neglect records' confidentiality is the Child Abuse

Prevention and Treatment Act (CAPTA) (42 U.S.C.A. §5106a).¹ CAPTA provides the framework for federal funding to states in support of child abuse and neglect prevention, identification, assessment, investigation, prosecution, and treatment. In order to receive federal funds for its child protective services program, a state must preserve the confidentiality of all child abuse and neglect reports and records, except in certain limited circumstances (see Question 2).

In addition to the aforementioned laws, several other state and federal laws require the confidentiality of and restrict the release of specific information that may be contained within CPS records. For example, medical information must be released in accordance with A.R.S. §§12-2292, 12-2294, and 36-509, and the federal Health Insurance Portability and Accountability Act (HIPAA) (45 CFR Part 160 and Subparts A and E of Part 164). Further, educational information must be released in accordance with the federal Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. §1232g; 34 CFR Part 99).

¹ CAPTA was most recently amended and reauthorized on June 25, 2003, by the Keeping Children and Families Safe Act of 2003 (Public Law 108-36).

Question 2: What entities or persons are allowed access to Arizona's CPS information?

Federal and state laws allow for the dissemination of confidential CPS information under limited circumstances to various entities and individuals, such as citizen review or fatality review panels, individuals who are the subject of a CPS report, and legislators.

Although CAPTA stipulates that states must implement methods to preserve the confidentiality of CPS records, it allows for the following entities and persons to access confidential CPS information:

- Individuals who are the subject of a CPS report alleging child abuse or neglect;
- Persons who work in federal, state, or local government who need CPS information in order to carry out their responsibilities in protecting children from abuse and neglect;
- Citizen review panels that evaluate the extent to which the state and local child protection system agencies are effectively discharging their child protection responsibilities;
- Child fatality review panels that review circumstances surrounding the deaths of all children under 18 years of age in order to develop recommendations for reducing preventable childhood deaths; and
- A grand jury or court, given that the information in the record is necessary for the determination of an issue before it.

CAPTA also requires states to have provisions that allow for public disclosure of information regarding cases of child abuse or neglect that have resulted in a child fatality or near-fatality.

Arizona statute further specifies who may access CPS information. Under A.R.S. §8-807, the Department of Economic Security (Department) shall provide access to the following groups to provide oversight of CPS:

- A standing committee of the Legislature or a committee appointed by the President of the Senate or the Speaker of the House of Representatives for purposes of conducting investigations related to the legislative oversight of the Department;
- A legislator who is responsible for oversight of the enabling or appropriating legislation to carry out these functions;
- The Arizona Office of Ombudsman-Citizen's Aide that receives and investigates citizen complaints about the administrative acts of state agencies;
- Federal or state auditors; and
- Persons conducting any accreditation that the Department deems necessary.

Additionally, according to A.R.S. §8-807, the Department may release confidential CPS information to:

- Confirm, clarify, or correct information concerning an allegation or actual instance of child abuse or neglect that sources outside the Department have made public;
- A person who is conducting bona fide research, the results of which may be beneficial in improving child protective services;
- A parent, guardian, or custodian of a child if it is reasonably necessary to promote the child's safety, permanency, and well-being;
- Persons not specifically authorized by law who petition a superior court and receive an order to release the information;
- Provide a summary of the outcome of a CPS investigation to the person who reported the suspected child abuse or neglect;
- A forensic medical evaluator; and
- A prospective adoptive or foster parent or guardian.

The Department is not required to disclose CPS information if the disclosure would compromise the integrity of a CPS or criminal investigation.

Question 3: What is the process for requesting Arizona's CPS information?

The process for requesting CPS information varies depending on the type of information being requested. Generally, the individual will have to provide to the Department verification of his/her identity as someone allowed to access confidential CPS information and a completed form indicating the type of information being requested.

The Department's administrative rules, R6-5-5601 et seq., establish the procedures for requesting and processing requests for confidential CPS information. The procedure will vary based on who is requesting the information, for example, the person alleged to have committed child abuse or neglect, the attorney for the child victim in a dependency hearing, or a legislative committee.

Nevertheless, in most instances, the requestor must send to the Department a completed, notarized, and signed information request form that includes information on himself/herself and the child victim, the specific information needed, and the purpose for which the information is needed. Individuals can obtain the required forms by requesting them from the Department. The completed information request should be sent to a local department office or to the address indicated on the form. In a few instances, such as a request pursuant to a research or evaluation project, a person may also need to send a processing fee of 25 cents per page to cover the costs of preparing CPS information for release.

Despite the requirement for the receipt of a completed request form before releasing CPS information, the Department's adherence to this requirement has been inconsistent. Auditors' interviews with CPS staff revealed that some staff do not require the use of official forms before releasing information. Instead, some staff indicated that they may instruct the person to list the needed information on a piece of paper and send that, along with a copy of his/her driver's license, to the Department. In other instances, staff indicated that they may direct the requestor to submit his/her request on letterhead.

According to administrative rules, upon receipt of an information request, the Department should determine whether it contains all the required information. If it is not complete, the Department should either return the request to the individual with a statement explaining the additional information needed or contact the individual to obtain the missing information.

Once a completed request for confidential CPS information is submitted to the Department, the Department's administrative rules require that the Department provide the requestor with one of the following within 30 days:

- The requested information;
- A statement that the requested information does not exist;
- A statement that the Department cannot provide the requested information within 30 days, the reason for the delay, and the anticipated time frame for a response; or
- A statement that the Department cannot legally release the requested information, with the statutory citation and the reason for denial.

When a person who is legally entitled to receive confidential CPS information requires the information immediately in order to assist a child who is or may be the victim of maltreatment, such as a physician, the Department may release the information without obtaining the form. However, before releasing the information, the Department should verify the individual's identity and determine whether he/she is entitled to that information.

Although the Department has procedures and forms for requestors of confidential CPS information to use, they are not readily accessible to the public. The Department's dissemination of this information primarily consists of a telephone number included on various notices and pamphlets indicating that individuals can call to ask for an information request form and an explanation of the process. The only public source providing a comprehensive description of the procedure is Arizona Administrative Code (A.A.C.) R6-5-5601 et seq. Additionally, this information can be confusing to follow since some of the statutory references have not been updated to the current CPS confidentiality statute, A.R.S. §8-807. Although the Department believes that the rules do not conflict with A.R.S. §8-807, a rules package is in development to provide additional clarification to A.A.C. R6-5-5601 et seq.

Question 4: What is the time frame in which the Department must provide the requested information?

The Department's administrative rules require that requests for confidential CPS information must be processed and responded to within 30 days. A.R.S. §8-807 states that legislative requests should be arranged within 10 working days.

According to the Department's administrative rules, once a completed request for CPS information is received, the Department has 30 days to provide the requested information or an explanation for why the request cannot be honored (see Question 3). The Department does not have a state-wide system for tracking whether the 30-day requirement is met, but auditors were provided a log of CPS information requests maintained by a single department office in Maricopa County. The log tracked the date the Department received the request to the date when the request form/letter and confidential records compiled by CPS staff were sent to the Attorney General's Office for review prior to being sent to the requestor.¹ Auditors found that for 26 of the

173 requests logged as being received between January and May 2007, it took the Department more than 30 days to get the information to the Attorney General's Office for review. In one instance, it took 107 days. Department staff indicated that it may take longer than 30 days to process a request because some case information may be difficult to locate and large case files take longer to redact.²

The Child Abuse Hotline, which processes requests for confidential CPS report information, maintains a log of the date received, date completed, and other details about CPS report requests. According to the log, in August 2007, the Hotline received 1,247 requests for CPS information. More than 98 percent of the requests were completed within 30 days of receipt. Department staff indicated that requests involving an ongoing investigation, where the investigation results have not been entered into the computerized database, may take longer to process.

If a legislator requests access to confidential CPS information, A.R.S. §8-807 requires the Department to arrange for the legislator to review the requested file at a department office, chosen by the legislator, within 10 working days from the receipt of the request. Auditors' review of such requests revealed that these requests were honored within the 10-day time frame unless the legislative member had scheduling conflicts.

Question 5: If a person is given confidential CPS information, can that person share the information with others?

No. Persons who receive confidential CPS information are prohibited from further disclosing the information.

According to A.R.S. §41-1959, records and files that relate to investigations conducted by CPS are confidential, thus, any secondary dissemination to individuals not statutorily authorized to receive such information is prohibited. Further, A.R.S. §8-807 specifically prohibits further disclosure of confidential CPS information by a standing committee of the Legislature or a legislator. Violating the confidentiality of CPS information is a class 2 misdemeanor.

¹ Department policy requires staff to consult with the Office of the Attorney General when there is uncertainty regarding a request. Requests for CPS information pursuant to subpoena or court order are submitted to the Office of the Attorney General for final review and processing.

² "Redacting" means to black out personally identifiable information contained in CPS records or files on protected individuals so that no one can read the information.