County of Orange Social Services Agency
Family Self-Sufficiency & Adult Services Division

Program/Area:	**Adult Services/Adult Protective Services**		
Title:	**Confidentiality Policy**		
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Approved:	**Signature on file**		

PURPOSE

To provide Adult Protective Services (APS) staff information regarding Confidentiality regulations.

POLICY

All information retained on behalf of elders and dependent adults by county APS agencies in the administration of the APS program is confidential. All information contained in the case record, as defined in the Manual of Polices and Procedures (MPP) Division 33, Chapter 8, Section 33-805, is also confidential.To the extent possible, the disclosure of confidential information must protect the rights of elders and dependent adults from the identification, exploitation, or embarrassment that could result from the disclosure of information that identifies them as clients of APS agencies.

A violation of confidentiality is a misdemeanor punishable by not more than six months in the county jail, a fine of five hundred dollars ($500), or both.

BOOKMARKS

- Release of Information With Client Consent
- Release of Information Without Client Consent
- Release of Information to Client or Authorized Representative
- Confidential Information/Other Agencies
- Release of Information to Local Law Enforcement
- Multidisciplinary Teams
- Public Safety Emergencies
- Disability Rights California
- Safe at Home
- References
- Attachments

DEFINITIONS

Refer to Adult Protective Services (APS) Glossary.

RELEASE OF INFORMATION WITH CLIENT CONSENT

APS may release confidential information to service providers, with the client's consent, when arranging for services needed to implement the service plan. When the client has an authorized representative, that representative may provide consent on the client's behalf. The client's verbal or written consent to release confidential information must be documented in the service plan.

Client consent does not authorize disclosure of reporting party information. Pursuant to WIC 15633.5, disclosure of reporting party information is permitted, only in limited circumstances.

RELEASE OF INFORMATION WITHOUT CLIENT CONSENT

The guidelines for releasing confidential information pertain to the disclosure of client information to various entities, including but not limited to, mandated reporters and multidisciplinary teams. Mandated reporters do not have equal access to confidential client information. The determination of what information to release to a mandated reporter is based on the identity of the mandated reporter and the purpose for the release of the information.

Information relevant to the incident of elder or dependent adult abuse shall be given to an investigator from an adult protective services agency, a local law enforcement agency, the office of the district attorney, the office of the public guardian, the probate court, the Division of Medi-Cal Fraud and Elder Abuse, the Department of Financial Protection and Innovation, or an investigator of the Department of Consumer Affairs, Division of Investigation, who is investigating a known or suspected case of elder or dependent adult abuse.

If the incident of elder or dependent adult financial abuse may be within the jurisdiction of a federal law enforcement agency, information relevant to the incident may be given to the federal law enforcement agency for the sole purpose of investigating a financial crime committed against the elder or dependent adult.

Information relevant to the incident of elder or dependent adult abuse may be provided to a local code enforcement agency for the sole purpose of investigating an unlicensed care facility where the health and safety of an elder or dependent adult resident is at risk.

Confidential information can be released without the consent of the client to certain agencies who are investigating a known or suspected case of elder or dependent adult abuse. The reporter's identity shall be confidential and disclosed only among the following agencies or people representing an agency, which include the following:

- Local Law Enforcement
- Division of Medi-Cal Fraud and Elder Abuse
- Department of Consumer Affairs, Division of Investigation
- Long-Term Care Ombudsman

- Licensing agencies (California Department of Social Services Community Care Licensing Division, Department of Health Services Licensing and Certification Unit)
- California Department of Social Services
- Adult Protective Services Agencies
- Office of the District Attorney
- Office of the Public Guardian
- Probate Court
- Department of Financial Protection and Innovation
- Court Order
- When the reporting party voluntarily waives confidentiality

The confidential information that can be released to these agencies is contained in the Report of Suspected Dependent Adult/Edler Abuse (SOC 341) or county equivalent form. The information includes the following:

- Identity of the reporter; and
- Description of the injuries and conditions suffered by the victim due to the alleged incident of abuse; and
- Information relevant to the alleged incident of abuse.

APS employees may be ordered by the court to testify truthfully about personal observations and to disclose agency records in a proceeding pertaining to a petition for appointment of a conservator or a criminal prosecution for elder or dependent adult abuse.

APS records may be disclosed only under the following circumstances:

- Another county welfare department or the State Department of Social Services for purposes directly connected with the administration of public social services.
- Government entities authorized by law to conduct audits or oversight activities related to the administration of public social services, provided the records are used solely for that purpose and identifying information is not disclosed except in authorized proceedings.
- Other public agencies as required to verify eligibility or for purposes directly connected with the administration of public social services.
- Pursuant to a lawful court order, and only to the extent specifically authorized by the court.

RELEASE OF INFORMATION TO CLIENT OR AUTHORIZED REPRESENTATIVE

MPP Division 19 requires APS to allow clients, or other individuals authorized by the client to act on their behalf, to access confidential client information. Pursuant to Division 19, Section 19-005:

- Information relating to eligibility that was provided solely by the client contained in application or other records maintained by the county welfare department in connection with the administration of the public assistance programs, shall be open to inspection by the client or their authorized representative.

- For purposes of this section, an authorized representative is a person or group who has authorization from the applicant/recipient to act for them.
- Except, as otherwise provided, all authorizations are to be written. Written authorizations shall be dated and shall expire one year from the date on which they are given unless they are expressly limited to a shorter period or revoked.

Consistent with professional social work standards, APS may restrict access to certain documents when release of the information will cause serious harm to the client. Social workers should disclose the least amount of confidential information necessary to achieve the desired result. Only information that is directly relevant to the purpose for which the disclosure is made should be revealed.

An APS client or their authorized representative must be permitted access to written documents provided by the client, along with any documents the client was required to sign by the county. Since this provision indicates that the documents can be given to either the client or the authorized representative, APS may choose not to give documents to the authorized representative when the contents of the documents suggest that the client would not want the information released to the authorized representative. For example, this may be true during an investigation of elder or dependent abuse in which the authorized representative is implicated in some way.

In such instances, APS should provide the documents to the client only, either in person or by mail. If the client chooses to release the information to their authorized representative, the client is free to do so.

CONFIDENTIAL INFORMATION/ OTHER AGENCIES

APS must be aware that information provided by other agencies may be subject to special confidentiality requirements. Such agencies may include, but are not limited to the following:

- Social Security Administration
- Veterans Administration, and
- Department of Industrial Relations, Workers' Compensation Division

The type of information provided that may be confidential includes, but is not limited to,

- Alcohol treatment reports
- Medical reports
- Mental health reports
- Human immunodeficiency virus (HIV) information, and
- State summary criminal history information.

Individuals seeking information from county APS agencies that has been obtained from other agencies should be encouraged to contact the other agencies directly.

RELEASE OF INFORMATION TO LOCAL LAW ENFORCEMENT

Local law enforcement agencies may also receive a copy of the APS investigative report, Investigation of Suspected Dependent Adult Elder Abuse (SOC 343) or county equivalent form, along with any information or findings relevant to the incident of elder or dependent adult abuse (WIC Sections 15633.5; 15640; 15650). APS is required to inform investigative agencies who receive confidential information related to the alleged incident of abuse that they are bound by the same confidentiality requirements as the county adult protective services agency.

Limited Disclosure for Deceased Clients (WIC §10850.7)

Limited information may be released to a law enforcement agency when the client is deceased, and the law enforcement agency is unable to identify the individual without the information. Release of this information is allowed only upon a written request from the head of the law enforcement agency, in accordance with applicable legal requirements. The information that can be shared is limited to:

- Name
- Address
- Telephone number
- Date of birth
- Social Security Number
- Physical description

The information specified may alternatively be released by telephone, whereupon the head of the law enforcement agency shall submit the request in writing within five (5) days of the release.

Limited Disclosure for Specific Criminal Investigations (WIC §10850(i)

Counties may disclose limited confidential information regarding an APS client (a “public social services applicant or recipient”) to state or local law enforcement only when law enforcement is investigating any of the following:

- A criminal act committed in a county welfare department office
- A criminal act committed against a county or state welfare worker
- Any criminal act witnessed by a county or state welfare worker while performing public social services duties at any location
- A criminal act intentionally committed by an APS client against an off-duty county or state welfare worker in retaliation for actions taken in the course of duty, when the offender knows or reasonably should know the victim is a welfare worker.

Disclosure under this section is strictly limited to the client’s:

- Name
- Physical description
- Address

No additional case details or APS records may be released under this provision.

Disclosure When a Criminal Arrest Warrant Has Been Issued (WIC §10850.3(a))

APS may disclose limited confidential information when a felony or misdemeanor arrest warrant has been issued for an APS client. Permissible information for release:

- Name
- Address
- Telephone number
- Date of birth
- Social Security Number
- Physical description

No other APS records or information may be released under this section.

Required Written Request and Authorization

Disclosure under WIC §10850.3 may occur only when APS receives a written request from:

- The head of the law-enforcement agency, or
- An employee specifically authorized in writing, identified by name and title, by the head of the law enforcement agency.

The written request must clearly state that a felony or misdemeanor arrest warrant has been issued for the APS client.

Client Notification Requirement

APS must notify all APS applicants and recipients that their confidential information will not be protected if a felony or misdemeanor arrest warrant is issued for them, and that APS is legally required to release specific identifying information to law enforcement under those circumstances.

All Other Disclosures Require a Court Order

Except for the circumstances described above and emergency situations defined elsewhere in this policy, no other disclosure of confidential APS information to law enforcement may occur without a valid court order.

MULTI-DISCIPLINARY TEAMS

Confidential information can also be released to multidisciplinary personnel teams if the information is relevant to the prevention, identification, or treatment of abuse of elders or dependent adults. APS must inform members of such multidisciplinary personnel teams that confidential information must not be disclosed to non-team members. Any personnel of the multidisciplinary team or

agency who receives information shall be under the same obligations and subject to the same confidentiality penalties as the person disclosing or providing that information. The information obtained shall be maintained in a manner that ensures the maximum protection of privacy and confidentiality rights. In addition, APS is required to inform all multidisciplinary personnel team members that confidential information that is disclosed to them cannot be used for any other purpose.

APS and Children and Family Services (CFS) may exchange information for the purpose of multidisciplinary teamwork related to the prevention, intervention, management, or treatment of abuse involving a child, elder, or dependent adult.

PUBLIC SAFETY EMERGENCIES

APS may disclose the name, residential address, telephone number, and email address of elderly or disabled individuals receiving services to police, fire, paramedical personnel, or other designated emergency services personnel, in the event of a public safety emergency that necessitates the possible evacuation of the area in which those elderly or disabled clients reside. These public safety emergencies include, but are not limited to,

- fires
- earthquakes
- gas leaks
- bomb scares
- public safety power shutoffs, and
- other natural or human-made occurrences that jeopardize the immediate physical safety of county residents

APS shall notify elderly or disabled individuals receiving services, at the time the individual is enrolled in services or at the time of the agency's next contact with the individual, whichever occurs first, of this requirement. Individuals shall have the option to opt out of having their name, residential address, telephone number, and email address disclosed during a public safety emergency.

In the event of a public safety power shutoff, the county may disclose information (name, residential address, telephone number, and email address) to the extent necessary to prepare an individual for the loss of power and to ensure their safety and well-being within 48 hours preceding and following the event.

Confidential information may also be released by APS in an emergency in which the APS acts to prevent harm to a client and the consent of that client cannot be secured. For example, APS may need to relocate the client to protect the individual from imminent danger in life threatening situations and to avoid physical harm or mental suffering. In some circumstances it may not be possible, because of the condition of the client, to obtain consent. Emergency situations may include, but are not limited to, arranging for necessary medical treatment, housing, and/or placement of an elder or dependent adult.

DISABILITY RIGHTS CALIFORNIA

The Protection and Advocacy program was established after severe legal and human rights violations in institutions were exposed in the 1970s. Under Public Law 94-103, each state is now required to have an agency designated to provide protection and advocacy services to people with disabilities. In California, Disability Rights California is the Protection and Advocacy agency. It is independent of any state agency. It provides legal and general advocacy to:

1. Protect people with disabilities from abuse and neglect; and
2. Advocate for them when they have been denied disability rights.

United States Code (USC) 42 USC 15043, speaks to the authority of the Protection and Advocacy agency regarding individuals with developmental disabilities; 42 USC 10801 speaks to their authority (see 42 CFR 51).

Under its federal mandate, Disability Rights California may investigate any incident of abuse or neglect of any person with a disability if the incident is reported to the protection and advocacy agency, or if the protection and advocacy agency determines there is probable cause to believe the abuse or neglect occurred. This authority shall include reasonable access to a facility or program and authority to examine all relevant records and interview any facility or program service recipient, employee, or other person who might have knowledge of the alleged abuse or neglect (Welfare and Institution Code (WIC) § 4902). Disability Rights California is the only agency that is entitled to access APS client records. Other advocacy agencies fall under the traditional laws regarding confidentiality.

Conditions for Release of APS Records to DRC (WIC) § 4903

If a person with a disability who can authorize access expressly denies access after being informed of their right to do so, DRC shall not have access to that person's record

APS agencies have authority to release individual client records to Disability Rights California (DRC) under the following conditions:

1. The client must be a person with a disability. Age is not a disability; therefore, APS may not release information regarding an elder unless the elder also meets the definition of a person with a disability; **and**
2. One or more of the following conditions apply:
    - Client, or the client's legal representative, has provided valid release of information
    - Client lacks capacity, has no legal representative, this includes clients DRC is unable to locate
    - Client is deceased
    - Client's legal representative is aware of the abuse or neglect and has failed or refused to act to protect the client.
    - Any person with a disability covered under WIC 4902(a), which allows DRC to act when it receives a report or complaint of abuse or neglect, identifies probable cause of such abuse or neglect, or determines that an individual's health or safety is in immediate and serious jeopardy.

However, if a person with a disability who can authorize the protection and advocacy agency to access their records expressly denies access after being informed of their right to do so, DRC shall not have access to that person's record

Record Release to DRC

Client records that shall be available to DRC include, but are not limited to all of the following:

1. Information and records related to the investigation, whether draft or final, including, but not limited to:
    a. Initial report
        i. Including the name of the reporting party which requires written consent from the reporting party to DRC.
    b. Assessment
    c. Evaluation* (e.g. findings)
2. Supportive services, including, but not limited to:
    a. Medical records*
    b. Financial records
    c. Monitoring reports
3. Reports prepared by APS that describe any, or all, of the following:
    a. Abuse, neglect, injury, or death
    b. Steps taken to investigate the incidents
4. Reports and records, including, but not limited to:
    a. Personnel records. (Personnel records shall be protected from disclosure in compliance with the fundamental right of privacy established pursuant to section 1 of article I of the California Constitution. The custodian of personnel records shall have a right and a duty to resist attempts to allow the unauthorized disclosure of personnel records, and may not waive the privacy rights that are guaranteed pursuant to section 1 of article I of the California Constitution.)
5. Supporting information relied upon when creating a report, including such things as interview notes, physical and documentary evidence, and case management system statistics.
6. Discharge planning records (e.g. case closures).

*The WIC § 4903 (d) states “the authority of the protection and advocacy agency to have access to records does not supersede any prohibition on discovery specified in sections 1157 and 1157.6 of the Evidence Code, nor does it supersede any prohibition on disclosure subject to the physician-patient privilege or the psychotherapist-patient privilege.”

As with any other release of information, the information released must match the information authorized for release on the form. Requests from Disability Rights California by their investigative unit should specifically cite the access authority.

Deadlines for Providing Access to Client Information

County APS agencies must provide Disability Rights California access to client records within three business days of the request or within 24 hours if there is probable cause to believe the APS client is in serious or immediate jeopardy, or in the case of death of an individual with a disability.

If the protection and advocacy agency's access to records is denied or delayed beyond the deadlines specified above, the protection and advocacy agency shall, within two (2) business days after the expiration of the deadline, be provided with a written statement of reasons for the denial or delay. In the case of a denial for alleged lack of authorization, the name, address, and telephone number of the guardian, conservator, limited conservator, or other legal representative of the individual with a disability shall be included in the statement

DRC's Requirement to Maintain Confidentiality

Confidential information obtained by DRC shall remain confidential and may not be subject to disclosure (WIC 4903[h] and 42 USC 10806[a]). However, DRC may:

1. Share the information with the client or his/her representative (subject to subsection [b] of section 10806 of Title 42 of the United States Code, e.g. the Mental Health Act).
2. Issue a public report of the results of an investigation that maintains the confidentiality of individual service recipients.
3. Pursue alternative remedies, including the initiation of legal action.
4. Report suspected elder or dependent adult abuse to APS or the Long-Term Care Ombudsman

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SAFE AT HOME

The California Safe at Home (SAH) Program is a confidential address and identity protection service for individuals who are survivors of domestic violence, stalking, sexual assault, human trafficking, child abduction elder or dependent adult abuse, and related crimes. The program is administered by the Office of the Secretary of State.

SAH program participants may request that state and local agencies use the confidential address as their address. APS staff must recognize and honor the confidentiality protections afforded to SAH participants and take appropriate measures to ensure their information remains confidential.

REFERENCES

All County Information Notice (ACIN) 1-91-18 Disability Rights California

All County Letter (ACL) 01-18 Confidentiality

Government Code
6207
6215.5

State of California Adult Protective Services Program Guidelines to Supplemental Regulations Version 2.4

Welfare and Institutions Code
4902
4903
9710.5
10850
10850.1
10850.3
10850.7
10850.9
15610.15
15633
15633.5
15763

ATTACHMENTS Investigation of Suspected Dependent Adult Elder Abuse (SOC 343)

Report of Suspected Dependent Adult/Edler Abuse (SOC 341)