

110 CMR: DEPARTMENT OF CHILDREN AND FAMILIES

110 CMR 12.00: RECORDS

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12.01: Purpose

110 CMR 12.00 defines how the Department shall fulfill the statutory mandate of M.G.L. c. 119, § 51F to "maintain a Central Registry." 110 CMR 12.00 also specifies the information kept in the Registry and enumerates the rules for access to information kept in the Registry. Lastly, 110 CMR 12.00 sets forth rules for access to other Department files or information.

12.02: Confidentiality of Department Records

Access to the Department's records* is governed by several sources of law:

- (1) M.G.L. c. 119, §§ 51E and F
- (2) M.G.L. c. 66A ("FIPA")
- (3) M.G.L. c. 4, § 7 clause 26 and M.G.L. c. 30, § 42 and M.G.L. c. 66 (Public Records Law)
- (4) M.G.L. c. 210, § 5C and 5D (adoption records)
- (5) See also M.G.L. c. 112, § 135 for limitation upon oral testimony by certain Department employees.

110 CMR 12.00 which follow define how the Department will act to safeguard the confidentiality of client records.

12.03: Central Registry - Contents

The Central Registry shall contain, but need not be limited to, all identifying data that is known ("identifying data" shall mean name, date of birth, sex, ethnicity, and address) for each child who is the subject of a report pursuant to M.G.L. c. 119, § 51A.

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12.04: Central Registry - Expungement

Expungement, as mandated by M.G.L. c. 119, § 51F, shall be a computerized process whereby, with respect to a particular reported incident, the name and all other identifying characteristics relating to any child which is contained in the Central Registry, or to his/her parents or guardian, is permanently removed from the Central Registry.

12.05: Department Records - Expungement

Expungement, as mandated by M.G.L. c. 119, § 51E, shall be either:

- (a) a manual redaction process whereby, with respect to a particular reported incident, the name and all other identifying characteristics relating to any child or to his/her parents or guardian, is permanently removed or redacted from the Department's 51A standard report form, and the Department's 51B standard investigation form; or
- (b) the shredding of the 51A and 51B forms. The Department may elect either of the expungement options in 110 CMR 12.04 or 110 CMR 12.05.

12.06: Release of Information - Providers

(1) The Department may release to any Department provider or other individual or entity acting at the Department's request, any records, documents, or information which in the judgment of the Department is necessary for service delivery to children in the care or custody of the Department.

Commentary

In order to adequately serve the children in its care and custody, the Department must necessarily release a variety of personal information about a child (as well as the child's family and other third parties) to a variety of providers or other individuals who serve the child, such as the child's doctor, dentist, psychiatrist, hospital, school, foster parents, day care center, private placement or adoption agency, camp, etc. Providers (*e.g.* day care centers, camps, etc.) under contract with the Department may receive and hold information from the Department, subject to the same restrictions upon release as apply to the Department. Other individuals or entities (*e.g.* doctors, hospitals, schools, *etc.*) may be given so much information as is, in the Department's judgment, necessary for them to provide needed services.

(2) Only employees of the Department may release information from Department files. Only the Commissioner or his/her designee may release information from the Department's Central Registry. Agencies or providers under contract with the Department holding Department records must consult the Department before releasing any information or documents from the Department's files.

12.07: Release of Information - Subpoena or Other Legal Process

Whenever any Department records, documents or information are sought by compulsory legal process (subpoena, *etc.*) in any civil proceeding (for criminal proceedings, *see* 110 CMR 4.53) the Department shall not release such records until the Department has made reasonable efforts to notify each data subject identified in the records, so that he/she has reasonable time to seek to have the process quashed, in accordance with M.G.L. c. 66A, § 2(k). The Department's efforts to notify the data subject(s) may be written or oral, including notice by telephone. If the Department is unable to contact a data subject, the Department shall document in the case record the efforts made to contact the data subject, and thereafter the Department shall release the records sought.

In the alternative (and especially for voluminous records or files) the Department may elect to bring the entire file (unredacted, and without prior notification to any third parties named therein) before a judge *in camera*, and seek an order from said judge as to which records must be released by the Department. Then, before releasing such records as ordered by the judge, the Department shall attempt to notify third parties, as set forth in 110 CMR 12.07.

12.08: Release of 51A and 51B Forms

(1) The Department's release of 51A reports and 51B investigations is governed by M.G.L. c. 119, § 51E. Copies of 51A reports and 51B investigations shall be made available only if one of the following is obtained:

- (a) The written consent of the child's parent(s) ("parent" shall mean the child's mother, or the child's father as "father" is defined by M.G.L. c. 209C, § 6) or guardian(s) or counsel. Regardless of whether parental or guardian consent is obtained, the Commissioner or his/her designee shall have the discretionary authority to grant or deny the request in order to promote and protect the best interests of the child.
- (b) The written approval of the Commissioner or his/her designee.
- (c) An order of a court of competent jurisdiction. A "court of competent jurisdiction" may include an out-of-state (non-Massachusetts) court, or a military court, so long as that court has some form of jurisdiction over the subject matter or the party(s).

All requests for 51A reports/51B investigations should be in writing or by telephone, and should be directed to the Regional Director, as the Commissioner's designee. Letter requests (but not telephone requests) will be accepted if made by an attorney on behalf of his/her client, as long as the attorney's request letter specifically states that the attorney is authorized to act on behalf of the client and is accompanied by a release or authorization signed by the client. Upon receipt of a request for the release of 51A/51B reports, the Regional Director or his/her designee contacts the Area Office which is currently responsible for the particular case. The Regional Director, or his/her designee, requests from the Area Director or his/her designee, a copy of the 51A report and 51B investigation, together with a recommendation from the Area Director or his/her designee as to whether granting the request of the requesting party would be contrary to the child's best interests. The Area Director sends a copy of the 51A report and 51B investigation, together with his/her recommendation, to the Regional Director. Upon receipt of the 51A report, 51B investigation, and recommendation from the Area Director or his/her designee, the Regional Director or his/her designee decides whether to release all or portions of the information based upon an analysis of whether such release to the requesting party would be contrary to the child's best interests. Upon a decision to grant all or part of the request, the material will be made available to the requesting party from the Regional Office within 30 calendar days of the initial request (or 45 calendar days if the requested material is voluminous). As to all persons other than an attorney who has complied with the requirements of 110 CMR 12.00, if the requesting party:

- (d) wishes to personally appear to obtain his/her copies from the Regional Office, some positive form of identification (photo drivers license, birth certificate, *etc.*) will be required; or
- (e) wishes to have the material mailed some positive form of identification (photocopy of photo drivers license, photocopy of birth certificate) must be furnished in advance.

(2) A request may be granted by the Regional Director as the Commissioner's designee, but only when, in the opinion of the Regional Director, granting the request would not be contrary to the best interests of the child. The Regional Director shall send written notice of any denial to the requesting party stating the reasons for denying the request. No fair hearing or grievance shall be available concerning such a denial by the Regional Director, but an aggrieved party may exercise any other rights or remedies available at law.

(3) A request may be allowed in part and denied in part by the Regional Director as the Commissioner's designee, but in such cases the Regional Director shall so inform the requesting party and shall inform said party of the type of information withheld. Information which may be withheld, where appropriate, includes such material as attorney-client communications, other privileged material, portions which would be contrary to the best interests of the child if released, etc. No fair hearing or grievance shall be available concerning such a denial by the Regional Director, but an aggrieved party may exercise any other rights or remedies available at law.

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12.08: continued

(4) A non-custodial parent (*i.e.*, divorced, adjudicated unfit, etc.) shall have the same right of access to said 51A and 51B reports as does the custodial parent, and is equally subject to the limitations of 110 CMR 12.08(2) and (3). For purposes of 110 CMR 12.08, the request of one parent or guardian (not both parents nor both guardians) shall be sufficient to cause the Department to release to that individual a copy of the 51A report and 51B investigation, subject to the other limitations of 110 CMR 12.08.

(5) Whenever the Department releases any copy of a 51A report or 51B investigation, the name of (and any other reasonably identifying data concerning) the reporter shall be redacted. Other information may be redacted as set forth in 110 CMR 12.08(3) (*i.e.* attorney-client communications, privileged material, material contrary to the best interests of the child, *etc.*). However, this provision shall not apply to release of a 51A report or 51B investigation to a District Attorney, which shall not be redacted.

(6) See also 110 CMR 10.14, Regarding release of 51A/51B reports to alleged perpetrators for purposes of fair hearing.

12.09: Release of Information - Litigation

(1) In all court proceedings (including but not limited to care and protection actions, termination of parental rights actions, etc.) in which the Department or a provider under contract with the Department is a party, a copy of the entire social services file, including the pertinent 51A reports and 51B investigations, shall be made available, upon written request, to any of the following individuals:

- (a) A court investigator appointed pursuant to M.G.L. c. 119, § 24
- (b) A court-appointed guardian ad litem
- (c) An officer of the court assigned by the judge to the case
- (d) An attorney for the child, parent or legal guardian, if that attorney has been appointed or retained for the particular proceeding

(2) The written request must contain a statement from the requesting party that any material disclosed shall not be further duplicated nor divulged to any person not a party to the particular proceeding, unless by order of court. Fees for copying records shall be charged in accordance with the Department's fee schedule.

(3) Before releasing said file(s), a member of the Department's legal staff shall review the file(s), and remove any records of attorney-social worker conversations which may be considered attorney work product and/or privileged.

(4) Whenever the Department releases any copy of a 51A report or 51B investigation, the name of (and any other reasonably identifying data concerning) the reporter shall be redacted.

(5) Whenever the Department has reason to believe that disclosure to any individual named in 110 CMR 12.09(1)(a) through (d) of all or a portion of the social service file would be contrary to the child's best interest, the Department shall deny access and shall bring to the court's attention the reason(s) for denying access.

12.10: Release of Information - Non-litigation

(1) Unless specifically governed by another provision in 110 CMR 12.10, all records held by the Department about a person are available to that person, with all third-party identifiers redacted, except for identifiers of third parties who are employees or providers of the Department, which shall not be redacted.

(2) Parent(s) may have access to their minor child's records until the child reaches 18 years of age. After a child reaches 18 years of age, parent(s) do not have access to their child's records without the child's consent.

12.10: continued

(3) In order to obtain records, an individual must file a written request directed to the Area or Regional Director where the records are located. (In the event of uncertainty, such a written request may be directed to either). Fees for copying records shall be charged in accordance with the Department's fee schedule.

(4) Before releasing said record(s), a member of the Department's legal staff shall review the record(s), and remove any records of attorney-social worker conversations which may be considered attorney work product and/or privileged.

(5) Whenever the Department has reason to believe that disclosure to any requesting individual of all or a portion of the Department's records would be contrary to a child's best interests, the Department shall deny access and shall furnish to the requesting individual a written explanation of the reason(s) for denying access.

(6) Whenever the Department releases any copy of a 51A report or 51B investigation, the name of (and any other reasonably identifying data concerning) the reporter shall be redacted.

12.11: Release of Information - Consent of Data Subject

Whenever information may be released if the data subject "consents", the Department may obtain such consent in writing or orally, including by telephone; however, the Department shall make reasonable efforts to verify the data subject's identity; and shall, if no written consent is given, file a record of any oral approval in the case record.

12.12: Release of Information - Adoption Records

Release of any records, documents, or information from an adoption file is governed by 110 CMR 7.211.

12.13: Release of Information - Medical Records

Release of any medical records, documents or information ("medical" shall include psychiatric and dental) from any Department file is governed by 110 CMR 11.22.

12.14: Release of Information - Bureau of Special Investigations

Any authorized agent or representative of the Bureau of Special Investigations may have access to any documents, records, or files of the Department. *See* M.G.L. c. 7, § 30(R) and (T).

12.15: Release of Information - Department of Youth Services

Any authorized agent of the Department of Youth Services (DYS) may have access to any documents, records, or files of the Department regarding a child who is at the time of the request for access, in the custody of DHS. *See* M.G.L. c. 119, § 69A.

12.16: Correction of Information by Client

A Department client shall have the right to furnish to the Department, for inclusion in his/her record, a written statement of his/her version of any fact(s), in order to correct, supplement, or clarify any matter contained in the Department's file with which the client disagrees or is dissatisfied.

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12.17: Release of Information - Other State Agencies

The Department may provide personal data, as that term is defined by M.G.L. c. 66A, § 1, to other state agencies for the sole purpose of enabling the receiving state agency to apply for and to receive federal funds, provided that the receiving state agency uses the personal data for that purpose and none other.

REGULATORY AUTHORITY

110 CMR 12.00: M.G.L. c. 119, §§ 51E through F; c. 7, § 30(R), (T); c. 66A; c. 112, § 135; c. 4, § 7 and c. 210, § 5C.