110 CMR 12.00: RECORDS

Section

12.01: Purpose

12.02: Confidentiality of Department Records

12.03: Central Registry - Contents

12.04: Central Registry - Expungement

12.05: Department Records- Expungement

12.06: Release of Information - Providers

12.07: Release of Information - Subpoena or Other Legal Process

12.08: Release of 51A and 51B Forms

12.08A: Release of Information – Fatalities and Near Fatalities

12.09: Release of Information - Litigation

12.10: Release of Information - Non-Litigation

12.11: Release of Information - Consent of Data Subject

12.12: Release of Information - Adoption Records

12.13: Release of Information - Medical Records

12.14: Release of Information - Bureau of Special Investigations

12.15: Release of Information - Department of Youth Services

12.16: Correction of Information by Client

12.17: Release of Information - Other State Agencies

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 2.00 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, including, but not limited to:

(1) M.G.L.c. 119, § 51E and F (Confidentiality of DCF Reports and Central Registry)

(2) M.G.L.c. 66A (Fair Information Practices);

(3) M.G.L.c. 4, § 7 clause 26 (Public Records Exemptions)

(4) M.G.L.c. 30, § 42 (Records Conservation Board)

(5) M.G.L.c. 66 (Public Records Law);

(6) M.G.L.c. 210, § 5C and 5D (Adoption Records);

(7) M.G.L.c. 112, § 135-135B (Social Worker Privilege) ;

(8) 42 USC § 5106a(b)(2)(A) (Child Abuse Prevention and Treatment Act);

(9) 42 USC §671(a)(8) (Title IV-E of the Social Security Act); and

(10) 45 CFR § 205.50 (Federal regulation of Title IV-E and Title IV-B).

110 CMR 12.00, consistent with all applicable laws, defines the processes the Department follows to safeguard the confidentiality of client records.

12.03: Central Registry - Contents

 The Central Registry shall contain, but need not be limited to, the 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, their parent(s) or caregivers, the outcome of the response to the report and may include the name of the person responsible for the alleged abuse or neglect and whether that person was included in the Department’s Registry of Alleged Perpetrators .

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, or to his or her parents or guardian, contained in the Central Registry, 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 or her parents or guardian, is permanently removed or redacted from the Department's 51A standard report form, and the Department's 51B standard response form; or

(b) the shredding of the 51A and 51B forms.

The Department may elect either of the above expungement options 110 CMR 12.04 or 110 CMR 12.5.

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 or custody, the Department must necessarily release a variety of personal information about a child, 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, child care center, private placement or adoption agency and camp. Providers under contract with the Department may receive and hold information from the Department, subject to the same confidentiality disclosure restrictions as apply to the Department. Other individuals or entities providing services to the child may be given information only as is necessary, in the Department's judgment, for them to provide needed services.

(2) Only employees of the Department may release information from Department files, including the 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 in a civil proceeding by compulsory legal process, such as a subpoena, 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 s/he 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 accordance with applicable federal and state laws and regulations. (For criminal proceedings, see 110 CMR 4.53)

 In the alternative, where the records and/or files are voluminous, 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.

 Release of Department records will comply with Probate and Family Court Standing Order 2-11, Torres v. Attorney Gen., 391 Mass. 1 (1984) and Allen v. Holyoke Hospital, 398 Mass. 372 (1986)

12.08: Release of 51A and 51B Forms

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

(a) The written consent of the child's parent(s) 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. For the purpose of 110 CMR 12.08 parent shall mean the child’s mother or the child’s father as father is defined in M.G.L. c. 209C, § 6.

(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 court, or a military court, so long as that court has some proper jurisdiction over the subject matter or the party(s).

All requests for 51A and 51B documents whether oral or in writing, should be directed to the Area Director who conducted the response or the Case Investigation Unit (CIU), as applicable, as the Commissioner's designee. Only written requests for documents will be accepted from attorney on behalf of his/her client, provided the attorney's request letter specifically states 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 documents, the Area/CIU Director will determine whether granting the request of 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 Area/CIU Office and DCF will make good faith efforts to provide the materials as promptly as administratively feasible. As to persons other than an attorney who seek copies of 51A and 51B documents, they may obtain copies of such records as follows, provided they have complied with the requirements of 110 CMR 12.00:

(d)he or she may personally appear and provide the Area/CIU Office with a positive form of identification, including a birth certificate or valid driver’s license or passport, or

(e) he or she may request to have the materials mailed provided a positive form of identification as described above has been furnished in advance.

(2) A request may be granted by the Area/CIU Director as the Commissioner's designee, but only when, in the opinion of the Area/CIU Director, granting the request would not be contrary to the best interests of the child. The Area/CIU 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 Area/CIU 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 Area/CIU Director as the Commissioner's designee. In such cases, the Area/CIU Director shall so inform the requesting party of the partial denial and the type of information withheld. Information which may be withheld, where appropriate, includes attorney-client communications, other privileged material, and other information if released would be contrary to the best interests of the child. No fair hearing or grievance shall be available concerning such a denial by the Area/CIU Director, but an aggrieved party may exercise any other rights or remedies available at law.

(4) A non-custodial parent, such as a non-custodial divorced parent or a parent who has been adjudicated unfit, 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 a copy of a 51A or 51B documents , the name of the reporter and any other reasonably identifying data, shall be redacted. Other information may be redacted as set forth in 110 CMR 12.08(3). However, this provision shall not apply to release of a 51A or 51B documents to a District Attorney, local law enforcement, the Office of the Child Advocate or other state agencies pursuant to M.G.L. c. 119, § 51B, which shall not be redacted.

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

12.08A: Release of Information – Fatalities and Near Fatalities

 If the Department receives a request for information from its records related to a child fatality or near fatality, the Department will release the following information concerning that child:

1. The cause or circumstances regarding the child fatality or near fatality.
2. The age and gender of the child.
3. Information describing any previous reports of child abuse or neglect that are pertinent to the abuse or neglect that lead to the child fatality or near fatality.
4. Information describing any previous investigations pertinent to the abuse or neglect that lead to the child fatality or near fatality.
5. The result of any such investigations.
6. The services provided by the State and actions of the State on behalf of the child that are pertinent to the abuse or neglect that lead to the child fatality or near fatality.

12.09: Release of Information - Litigation

 (1) In all court proceedings including, but not limited to, care and protection actions and termination of parental rights actions, where the Department or a provider under contract with the Department is a party, a copy of the entire family or child case file, including the pertinent 51A and 51B documents, 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 considered to be attorney work product and/or attorney client privileged communications (4) Whenever the Department releases a copy of a 51A or 51B document , the name of the reporter and any other reasonably identifying data shall be redacted.

(5) Whenever the Department has reason to believe that disclosure to any individual named in 110 CMR 12.09(a) through (d) of all or a portion of the family or child case 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.

(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 the Area Director or the Regional Director). Fees for copying records may be charged in accordance with the regulations set forth by the Secretary of State at 950 CMR 32.07(2).

(4) Before releasing said record(s), a member of the Department's legal staff shall review the record(s), and remove any records considered to be attorney work product and/or attorney client privileged communications.

(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 or 51B documents, the name of the reporter and any other reasonably identifying data shall be redacted.

12.11: Release of Information - Consent of Data Subject

 Whenever information may be released subject to the consent of the data subject, 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 if no written consent is given, file a record of the oral consent in the case record.

**12.12A: Release of Information – Office of the Child Advocate**

 Release of any records, documents or information to the Office of the Child Advocate is governed by M.G.L. c. 18C and any memorandum of understanding entered into between the Department and the OCA.

12.12: Release of Information - Adoption Records

 Release of any records, documents, or information from an adoption file is governed by 110 CMR 21.005.

12.13: Release of Information - Medical Records

 Release of any medical records, documents or information ("medical" shall include psychiatric, social and dental services) 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, committed to DYS. *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.

12.17: Release of Information - Other State Agencies

(a) 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.

(b) The Department as an agency within Executive Office of Health and Human Services (EOHHS) may share information and data with other EOHHS agencies in accordance with the Memorandum of Understanding entered into among the EOHHS agencies.

(c) See, 110 CMR 4.33 for release of Central Registry information to other state agencies.

REGULATORY AUTHORITY

M.G.L. c. 18B, § 7(i); and M.G.L. c. 119, § 37.