

## OCA Protocol on the Release of Confidential Information

Through the course of its work<sup>1</sup>, the OCA has access to highly sensitive and confidential information about the lives of children and families, the public release of which could cause substantial personal harm to the individuals involved.

The OCA is required by law to protect the confidentiality of this information. The Child Advocate can release confidential information only after determining that disclosure of such information – which typically is done in the form of a public investigative report – is necessary to enable the office to perform its statutory duties.<sup>2</sup>

This protocol delineates the process the Child Advocate uses to determine if the release of confidential information is necessary and when and how such release will occur if it is.

### *When is the Release of Confidential Information Necessary?*

The default assumption is that the OCA will release a public report containing confidential information when the Child Advocate determines all of the following circumstances to be true:

- A child receiving state services has suffered a fatality (or is missing and presumed to be deceased).
- The actions or inactions of a state entity (or entities) over which the OCA has oversight authority were egregious and significantly contributed to the harm of the child.
- Substantive and significant change in policy and practice – to include change in statute, regulation, budget, or administrative policy – is necessary to prevent future harm to children, and releasing the confidential information will significantly increase the likelihood that the necessary changes will be made.

It may not be possible to determine whether or not the above criteria have been met until after an investigation is complete. While the OCA reviews *all* cases brought to our attention, it is the policy of the OCA to decline to publicly comment on whether a full-scale investigation is being conducted and if a public investigative report will be released until this determination has been made.

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<sup>1</sup> For additional information about the various ways cases come to the attention of the OCA, please see our most recent annual report: <https://www.mass.gov/lists/oca-annual-reports>

<sup>2</sup> <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleII/Chapter18C/Section12>;  
<https://malegislature.gov/Laws/GeneralLaws/PartI/TitleII/Chapter18C/Section2>



Even when the above criteria are met, the Child Advocate may choose to delay or withhold the release of information in the following circumstances:

- Release of information would interfere with or otherwise jeopardize an ongoing criminal investigation and prosecution.
- The release of confidential information would cause substantial harm to a child, such as the deceased child's sibling.

#### *Other Situations When Confidential Information May Be Released*

The Child Advocate may also choose to release confidential information in limited circumstances that do not satisfy the above criteria – for example, if the Governor or Secretary of an agency overseen by the OCA has publicly requested such an investigation, or in a situation where a child has experienced substantial harm but is not deceased.

The Child Advocate may also consider if confidential information is already in the public domain when determining what impact the release of information may have on a child and their family.

In all situations, the Child Advocate will strive to appropriately balance protecting the confidentiality of the child and their family with fulfilling the OCA's important public oversight functions, with the ultimate goal of promoting and protecting the wellbeing of the children of the Commonwealth.