

Disclosure Analysis Guidelines

Resource Guide

Almost all Child Welfare documents contain confidential information that may need to be redacted prior to disclosure. Analyzing what information the Oregon Department of Human Services may disclose requires critical thinking skills. This resource guide, the summary diagram and appendices are meant to provide information to guide critical thinking for the majority of questions related to disclosure and confidentiality. Further requests for assistance in analyzing disclosure issues should be made to an Oregon Department of Human Services paralegal or the Department of Justice.

Definitions

Child Welfare Record	Everything related to the child and family in the possession of the Oregon Department of Human Services (ODHS), Child Welfare (CW), which includes but is not limited to: photos, emails, service provider documents, case notes, electronic documents and case history. Certain documents and information included in the Department's certification records related to specific children and their care.
Client	A person to whom the Department provides services and includes children, parents, legal guardians, and legal custodians of unemancipated minor children who receive services. Individuals who apply for and individuals who are granted certifications to operate foster homes are not clients unless they are subjects of a child abuse assessment. Adoptive parents are clients when: (a) The Department has placed a child with them on a designated adoption basis; or (b) They have signed a legal risk adoption agreement.
Court Order	Court orders from within Oregon's judicial system. Court orders originating from other states may need additional consultation with a paralegal or the Department of Justice.
Disclosure	Information or documents provided to other persons: if required or permitted by state law, federal law, federal regulations or state administrative rule; pursuant to a court order; as required by a Subpoena Duces Tecum; in response to a public records request; as part of discovery; in order to facilitate the provision of services to children, parents or families; and in other circumstances where ODHS is required or authorized to release information or documents.
Discovery	Ongoing statutory obligation to disclose specific types of information and documents to all parties in a juvenile court proceeding within mandated timelines.
Expunged Record	Information removed from the CW record as required by court order regarding a specific person.
Redaction	To obscure or remove text from a document prior to release.
Subpoena	A command for appearance in court or at a deposition with penalty for failure to appear. (A person can be served with a subpoena to appear at a deposition at an attorney's office or some other location besides court.)
Subpoena Duces Tecum	A subpoena that requires: a) appearance in court or for a deposition and directs the subpoenaed person to bring specific records; or b) that specific records be delivered to a particular location, i.e., court, an attorney's office, etc.

Disclosure Overview and Examples

There are seven ways disclosure occurs. They are listed below with some examples of individuals we might be disclosing information to.

Appendix 5

- a. If required or permitted by state law, federal law, federal regulations or state administrative rule** – Citizen Review Board, Court Appointed Special Advocate, Law Enforcement Agency, Hospitals, Doctors and other Child Welfare agencies. Appendices 2.b, 2.j, 2.m, 7.a and 7.b
- b. Pursuant to a court order**
- c. As required by a Subpoena Duces Tecum**
- d. In response to a public records request** – This includes clients requesting copies of their own records. It may also include requests from media and opposing council in tort cases. Appendices 6.a, 6.b, 6.c
- e. As part of discovery** – Legal parties include: the child or ward (in the jurisdiction of the court); the parents or guardian of the child or ward; a putative father of the child or ward who has demonstrated a direct and significant commitment to the child or ward by assuming, or attempting to assume, responsibilities normally associated with parenthood, including but not limited to: residing with the child or ward, contributing to the financial support of the child or ward or establishing psychological ties with the child or ward; the state; the juvenile department; a court appointed special advocate, if appointed; the Oregon Department of Human Services or other child-caring agency if the agency has temporary custody of the child or ward; the child's Indian Custodian if the child is an Indian child and; the tribe in cases subject to the Indian Child Welfare Act. An intervenor who is granted intervention under ORS 419B.116 is a party to a proceeding under ORS 419B.100. An intervenor under this paragraph is not a party to a proceeding under ORS 419B.500. A guardian ad litem appointed under ORS 419B.231 will also receive discovery. Appendices 2.e and 2.n
- f. In order to facilitate the provision of services to children, parents or families** – including those provided by Psychologists, Psychiatrists, Alcohol and Drug Treatment Providers and Mental Health Treatment Providers
- g. In other circumstances where ODHS is required or authorized to release information or documents**

**Information below this point is numbered to
correspond to the Summary Diagram**

1. What type of disclosure is being requested? (Appendix 5)

Disclosure: All information released or distributed is disclosed information (see definitions above). We follow different rules when providing discovery, but it is also a form of disclosure. Appendix 1

Discovery describes the types of information that must be provided to all legal parties as part of discovery. Appendices 2.e and 2.n

Records requests made by individuals who want a copy of their own records or those of their own children are handled by the ODHS Public Records Unit.

Records requests made by Tribes on open cases and by government entities are handled by the local office. The paralegal or support staff involved in processing these requests should track them on the ODHS Child Welfare Records Requests website: <https://dhsoha.sharepoint.com/sites/ODHS-CW-RecordsRequests>

If records requests made by individuals who want a copy of their own records or those of their own children or by non-governmental public entities are received by the local office, local office staff should direct the requester to the ODHS Public Records Unit website: <https://www.oregon.gov/DHS/Pages/RecordRequests.aspx>

If records requests made by the media are received by the local office, local office staff should direct the requester to the Lisa Morawski at the ODHS Communications & Media Relations: Lisa.Morawski@dhsoha.state.or.us

Public Records Requests and subpoenas related to tort cases are handled by the ODHS Legal Unit. Scan the subpoena and e-mail it to: caroline.burnell@dhsoha.state.or.us

With a subpoena, provide this information:

- (1) When it was received (i.e. date/time)
- (2) How it was received (i.e. in person/by mail)

If you have any questions or need any assistance, contact Caroline Burnell via email or phone at 503-400-4678.

2. Additional important considerations to complete MSC 3010(Authorization)

Obtaining a signed Authorization for Disclosure, Sharing and Use of Individual Information (form MSC 3010) allowing mutual exchange of information is the simplest way for staff to receive and disclose information. Detailed instructions on completing the form are incorporated into the 3010 and will display if you click on the "Show instruction pages" button. Appendix 4.

In order to Facilitate the Provision of Services - Authorization from client must be specific to each individual provider identifying specific information to be disclosed. If the records being released contain HIV/AIDS, mental health, alcohol & drug and/or genetic testing information, the client must initial near the bottom of the Release FROM section. Appendices 4 and 8.

As Part of Discovery - Authorization needed from client to disclose HIV/AIDS, alcohol & drug and/or genetic testing information to juvenile court and all legal parties. The client must initial near the bottom of the Release FROM section.

Appendices 2.e, 4, and 8

In Response to Client/Public Records Requests - Client requests for their own information do not require an authorization (3010) and are handled by the ODHS Public Records Unit as are requests by non-government entities. Records requests made by media are handled by the ODHS Communications & Media Relations Office. Records requests and subpoenas related to tort cases are handled by the Oregon Department of Human Services Legal Unit. Records requests from tribes regarding open cases and those made by government entities are handled by the local office.

If Required by Law - Authorization (3010) is needed from the client to disclose HIV/AIDS, alcohol & drug treatment and/or genetic testing information (client must initial in the bottom portion of the Release FROM section). For all other information, the 3010 is not required. Appendices 4 and 8.

Pursuant to a Court Order - Not required.

As Required by a Subpoena Duces Tecum - Not always required but the 3010 authorization may permit release of information that is subject to the subpoena.

Other Circumstance where ODHS is Authorized - Consult with ODHS paralegal and/or DOJ.

Noteworthy information in the Your acknowledgment and Instructions sections of the 3010:

- This authorization is valid for one year from the date I sign it unless otherwise noted.
- I understand my representative or I can cancel this authorization. However, information shared before I cancel cannot be undone. I can orally cancel an authorization for drug and alcohol information. All other cancellation requests must be written. I must provide any request to cancel to the agency, business, organization or person that is providing the information.

Staff: When a client cancels an authorization, clearly note the date and write “Void” across the 3010.

Re-disclosure:

- RE-disclosure is the disclosure of information by the person on this form.
- There may be restrictions on the re-disclosure of information released under this form.
- Federal and state regulations prohibit re-disclosure of alcohol and drug, and HIV or AIDS information without specific authorization.

Entity name:

- Choose an entity from the drop-down list.
- If the entity is not listed, choose “Other (please type in here):” Then, type in the entity's name. An entity's name must be specific. For example, listing “medical” or “service provider” is not adequate. Please list the name of the medical or service provider. For a person or other type of organization, such as a school or employer, list the name of the person or other type of organization.

Expiration date or event:

- This authorization is valid for one year from the date I sign. unless otherwise noted. For example, if another time period is entered or if an event such as “hospital discharge” or “end of litigation” is noted.

3. Under what authority/circumstances can a document or information be released?

- HIPAA protected health information may be released with a (1) court order, (2) pursuant to a special type of properly executed subpoena, (3) as permitted by an authorization (3010) or (4) as required by law, for example 419B.881 and 409.225. Appendices 2.a, 2.e, and 3. However, CW is not a covered entity or a business associate for the purposes of HIPAA, and therefore is not required to comply with HIPAA and its implementing regulations. For CW purposes this means that health information may be disclosed without a release of information or a court order. However, other state statutes may require DHS to exercise caution when disclosing this information as provided below.

For disclosures other than discovery, health information is generally considered information of a personal nature, and its disclosure may be considered an unreasonable invasion of privacy. Unless the public interest, by clear and convincing evidence, requires disclosure, health information may be exempt from public disclosure under ORS 192.335(2)(a).

Additionally, if the health information is exempt from disclosure under ORS 192.335(2)(a), ODHS may not be required to disclose records under ORS 409.225(2), (3), (5), or (6).

For purposes of discovery in a dependency case, health information about the parent or the child may be disclosed consistent with the Discovery & Redaction Guide. If a child objects to the disclosure of health information, consult with an AAG

- Federally protected alcohol and drug treatment information may be released with (1) a court order or (2) pursuant to an authorization (3010). Appendices 2.c , 3, and 8
- Domestic Violence victim contact and/or identifying information may be released with a court order or an authorization (3010). Information provided to the court can be viewed by the other party in a case, including the batterer. Service and safety plans can be described in general terms so as to not disclose specific information to the batterer. For purposes of discovery in a juvenile dependency case, information may be disclosed if the authorization specifically allows ODHS to share information with the court and the parties to the case. Consistent with the Discovery & Redaction Guide, consult with an AAG if the records contain information about a service provided to a parent or a child and the authorization is insufficient. If the situation requires sharing sensitive information which may affect safety, consult with the assigned AAG. Appendices 2.o, 2.p and 2.q

- Information gathered during a child protective service (CPS) assessment may be released with (1) a court order, (2) according to 419B.035(1)&(3) or (3) in accordance with the Information Memorandum dated August 17, 2009. Appendices 2.b, 3 and 6.c
- Information about people who report child abuse may be released as (1) part of a cross report to law enforcement or (2) by a Court Order. If disclosure of reporting party information is necessary because the reporter will be called to testify, consult with the assigned AAG. Appendices 3 and 6.d
- Certification records may be released (1) if court ordered, (2) with an authorization (3010), (3) as part of a public records request, or (4) if authorized or required by ORS 418.642, OAR 413-200-0298 or other federal or state law. Certain documents and information included in the Department's certification records related to specific children and their care are included in discovery. For purposes of discovery in a juvenile dependency case, information about the child in the case may be disclosed to the court and the parties to the case. The Discovery & Redaction Guide explains which documents in a certification record should be disclosed. The name, address, and any identifying information about the resource family should be redacted from the documents. Appendix 2.e, 6.d
- Resource parent name, address and other identifying information are confidential and are not available for public inspection under ORS 418.642. This information may be released if the resource parent is the subject of a child abuse assessment or if court ordered or according to 418.642 and OAR 413-200-0298(3). Appendix 2.f
- Adoption records may be released when court ordered or when the adoptions manager determines that disclosure is necessary for the purpose of providing adoption services or the administration of child welfare services pursuant to ORS 109.319(7). Appendices 3 and 6.d
- Attorney/client privileged information between ODHS and Department of Justice (DOJ) is confidential and may never be released to anyone other than the DOJ. We may have cooperative relationships with local District Attorney Offices, but they do not represent ODHS, therefore ODHS does not currently have an attorney/client relationship with them where information is privileged.
- Pleadings, affidavits, motions, orders, petitions and judgments may be released only as provided in 419A.255 and 419A.257 or through a court order. Appendices 2.g and 2.k

4. What information MUST be redacted no matter where it is located in any document?

As part of Discovery

- Information that identifies an individual as a child abuse reporter including information in law enforcement reports. 419B.035(3) Appendices 2.b
- Third-party minors' names and identifying information when a third-party minor is also a client.
- Social Security numbers.
- Currently certified resource parent identifying information unless the document is a child abuse assessment, and the resource parent is the subject of the assessment.
- Never include any attorney/client privileged information (communication between AAG and ODHS)

Records Requests (Appendix 3)

Records Requests made by a client, the media or as part of a tort claim are not handled locally. See section one of this guide for instructions.

Records Requests made by government entities or by tribes when they are not parties to a case are handled locally. The following information should always be redacted when completing any records request:

- Social Security numbers
- Drug & alcohol treatment records
- HIV/AIDS
- Resource parent (current certification) name, address, phone and identifying information
- Self Sufficiency services, records or information.
- Domestic Violence victim location, services, phone number, etc.
- 3rd party identifying information when we know they are ODHS clients
- Reporting party (name/address/phone and identifying information of the reporter of child abuse)
- LEDS and NCIC reports and information taken from

them

- Criminal history obtained pursuant to a background check may only be disclosed on a need to know basis

Pursuant to a Court Order

When records are provided pursuant to a court order they should be accompanied by a cover letter that indicates they are being provided pursuant to a court order. If information has been redacted, it should explain what has been redacted and why (e.g. attorney client privileged communication between DHS and DOJ).

- Redact reporting party name, address, phone number and identifying information
- Release only information that the court order says must be released.
- Remove all attorney/client privileged information (communication between AAG and ODHS) from the file
- If the Court Order is for *In-Camera Review*, redaction will be minimal because the file is provided to the Judge for their eyes only and ODHS submits the request for a Protective Order to restrict use of the information to the purpose for which the file was subpoenaed and to ensure that confidentiality will be preserved by prohibiting re-disclosure. Seek assistance from an AAG for a protective order.
- Keep in mind that unless a court order, including an order for *In-Camera Review*, contains specific findings that allow it, we are still unable to disclose alcohol and drug treatment information.

As required by a *Subpoena Duces Tecum*

- A subpoena which requests items be brought with the person is called a "subpoena duces tecum". A subpoena duces tecum requires: a) appearance in court or for a deposition and directs the subpoenaed person to bring specific records; or b) that specific records be delivered to a particular location, i.e., court, an attorney's office, etc.
- Never include any attorney/client privileged information (communication between AAG and ODHS)

As Required by Law

- CASA and the dependency attorney for the child should have access to the "child's file" (ie: child's information in

the case file). Appendix 7.a

- CASA does not have complete access to the parent's information. That is only available through (1) a properly signed authorization (3010), (2) courtorder, or (3) as discovery. Appendices 2.e and 7.a
- Always redact reporting party name/address/phone and identifying information prior to providing documents or providing the file for viewing.
- Never include attorney/client privileged information (communication between AAG and ODHS).

In Order to Facilitate the Provision of Services

- A 3010 (Authorization for Disclosure, Sharing and Use of Individual Information) should be properly completed by the client authorizing ODHS to release confidential/protected information to the service provider for the purpose of treatment. Appendices 4
- Redact confidential/protected information regarding 3rd parties if we know they are ODHS clients.
 - Names
 - Date of birth
 - Social Security number
 - Address
 - Phone number
 - Medical
 - Mental health
 - Drug and alcohol treatment records or information derived from them
 - Criminal history
 - HIV/AIDS
 - Genetic testing
 - Vocational Rehabilitation services
 - Domestic violence victim location, services, phone number, etc.
- Redact reporting party name/address/phone and identifying information
- Never include any attorney/client privileged information (communication between AAG and ODHS)

Other Circumstances where ODHS is Authorized

This a “catch all” category to cover other miscellaneous disclosures where ODHS is required or authorized to release information or

documents

- Redact reporting party name/address/phone and identifying information
- Redact Domestic Violence information (ie: victim's location, services, phone number,etc.)
- Redact currently certified resource parent name/address/phone and identifying information unless disclosure is authorized by ORS 418.642 and OAR 413-200-0298(3).
- Redact any confidential or protected information that is not authorized by a properly completed 3010.
- Never include any attorney/client privileged information (communication between AAG and ODHS)