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## CONFIDENTIALITY

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# 6

## CONFIDENTIALITY

### **6.1 Introduction**

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It is the policy of the Commonwealth to promote ready access to records in the custody of public officials and free entry to meetings of public bodies wherein the business of the Commonwealth is being conducted. The purpose for promoting open disclosure of the activities of state government is to foster an increased awareness by all persons of governmental activities and afford every opportunity to citizens to witness the operations of government.

In performing its statutory duties, such as conducting an investigation of a report of adult abuse, neglect or exploitation, LDSS will collect and maintain personal information about an individual. Having recognized that the collection, maintenance, use and dissemination of personal information directly affect an individual's rights concerning privacy, the Code of Virginia authorizes the release of certain information under the Government Data Collection and Dissemination Practices Act. The Virginia Freedom of Information Act provides a person access to records in the custody of public officials.

When the LDSS receives a request for information, the LDSS must determine whether the information requested is confidential and must be protected or whether the information requested should be released under the Virginia Freedom of Information Act, the Government Data Collection and Dissemination Practices Act or Virginia Administrative Code.

For any request, LDSS are encouraged to seek legal advice and counsel prior to responding to a request the release of information.

### **6.2 Legal basis**

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The legal basis for this chapter is [§§ 63.2-104](#), [51.5-121](#), and [51.5-122](#) of the Code of Virginia, the Virginia Freedom of Information Act ([§ 2.2-3700](#) et seq. of the Code of

Virginia), the Government Data Collection and Dissemination Practices Act ([§ 2.2-3800](#) of the Code of Virginia), and by regulation promulgated the State Board of Social Services. Throughout this chapter, text that appears indented with a blue, vertical line denotes verbatim material from the Code of Virginia or the Regulations [22 VAC 40-910](#), General Provisions for Maintaining and Disclosing Confidential Information of Public Assistance, Child Support Enforcement and Social Services Records.

### **6.3 Definitions**

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The following words and terms are defined in state regulation ([22 VAC 40-910-10](#)). When used in this chapter, they shall have the following meaning, unless the context clearly indicates otherwise:

<b><u>Term</u></b>	<b><u>Definition</u></b>
<b>Agency</b>	A local department of social services (LDSS).
<b>Client</b>	Any applicant for or recipient of public assistance or social services or any individual about whom the child support enforcement division maintains information.
<b>Client Record or Client Information</b>	Any identifying or nonidentifying information, including information stored in computer data banks or computer files, relating to a client.
<b>Provider</b>	Any person, agency, or organization providing public assistance, child support enforcement services, or social services through a contract or an agreement with the department or agency.
<b>Research</b>	A systematic investigation, including research development, testing, and evaluation, designed to develop or contribute to general knowledge, including research for the development of new knowledge or techniques that would be useful in the administration of public assistance, child support enforcement, or social services programs.
<b>Social Services Program</b>	Foster care, adoption, adoption assistance, adult services, adult protective services, child protective services, domestic violence services, family preservation, or any other services program implemented in accordance with regulations promulgated by the State Board of Social Services.

## **6.4 Authority of DARS to request and receive information**

(§ [51.5-121](#) of the Code of Virginia). The Department may request and shall receive from all departments, boards, bureaus, or other agencies of the Commonwealth such records and information as is necessary for the purpose of carrying out the provisions and programs of this chapter, and the same are authorized to provide such information, provided that a written statement from the requesting party stating the reason for seeking such record is submitted and filed with the record sought. The Department may also request and receive records and information necessary for the purpose of carrying out the provisions and programs of this chapter from agencies or political subdivisions of other states. The Department may make such information available to public officials and agencies of the Commonwealth, other states, political subdivisions of the Commonwealth, and political subdivisions of other states in accordance with state and federal law when the request for information relates to administration of the various public assistance or social services programs.

## **6.5 Confidentiality of records**

(§ [51.5-122](#) of the Code of Virginia) A. The records, information, and statistical registries of the Department and local departments of social services concerning adult services and adult protective services provided to or on behalf of individuals shall be confidential information, provided that the Commissioner and his agents shall have access to such records, information, and statistical registries, and that such records, information, and statistical registries may be disclosed to any person having a legitimate interest in accordance with state and federal law and regulation.

*It shall be unlawful for the Commissioner, his agents or employees, any person who has held any such position, or any other person to whom any confidential record or information is disclosed to disclose, directly or indirectly, such confidential record or information, except as herein provided. Every violation of this section shall constitute a Class 1 misdemeanor.*

B. If a request for a record or information concerning applicants for and recipients of adult services provided pursuant to Article 4 (§ [51.5-144](#) et seq.) or adult protective services provided pursuant to Article 5 (§ [51.5-148](#)) is made to the Department or a local department by a person who does not have a legitimate interest, the Commissioner or local director shall not provide the record or information unless permitted by state or federal law or regulation.

## **6.6 Ownership of client records**

- ([22 VAC 40-910-20](#)). 1. Client records are the property of the department or agency. Employees and agents of the department or agency must protect and preserve such records from dissemination except as provided herein.
2. Only authorized employees and agents may remove client records from the department or agency's premises.
3. The department and agency shall destroy client records pursuant to records retention schedules consistent with federal and state regulations.

## **6.7 Virginia Freedom of Information Act**

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The Virginia Freedom of Information Act (FOIA) ([§ 2.2-3700 et seq.](#) of the Code of Virginia) ensures the people of the Commonwealth ready access to records in the custody of public officials and free entry to meetings of public bodies wherein the business of the people is being conducted. The affairs of government are not intended to be conducted in an atmosphere of secrecy since at all times the public is to be the beneficiary of any action taken at any level of government.

Record requests can be complex and it is recommended that the LDSS work their attorney when responding to FOIA requests. Even though an individual may request information pursuant to Virginia FOIA, the LDSS may not be able to disclose all information requested.

Responses to a FOIA request shall occur within **five working days** of the receipt of the request. Failure to respond timely to a FOIA request is considered a denial of the request and violation of FOIA.

The [DSS public website](#) contains information about Virginia FOIA.

## **6.8 Government Data Collection and Dissemination Practice Act**

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The Government Data Collection and Dissemination Practices Act ensures safeguards for personal privacy by record keeping agencies. The following principles of information practice have been established to ensure safeguards for personal privacy:

- ([§ 2.2-3800](#) of the Code of Virginia). 1. There shall be no personal information system whose existence is secret.
2. Information shall not be collected unless the need for it has been clearly established in advance.
3. Information shall be appropriate and relevant to the purpose for which it has been collected.

4. Information shall not be obtained by fraudulent or unfair means.
5. Information shall not be used unless it is accurate and current.
6. There shall be a prescribed procedure for an individual to learn the purpose for which information has been recorded and particulars about its use and dissemination.
7. There shall be a clearly prescribed and uncomplicated procedure for an individual to correct, erase or amend inaccurate, obsolete or irrelevant information.
8. Any agency holding personal information shall assure its reliability and take precautions to prevent its misuse.
9. There shall be a clearly prescribed procedure to prevent personal information collected for one purpose from being used for another purpose.
10. The Commonwealth or any agency or political subdivision thereof shall not collect personal information except as explicitly or implicitly authorized by law.

#### **6.8.1 Exceptions to the Government Data Collection and Dissemination Practices Act**

Section [2.2-3802](#) of the Code of Virginia contains exceptions to disclosing personal information.

Records maintained by VDSS related to child welfare, adult services or adult protective services, or public assistance programs are exempt when requests for personal information are made to VDSS. Requests for information from these systems shall be made to the appropriate LDSS, which is the custodian of that record.

### **6.9 Review of records pursuant to the Virginia Adminstrative Code**

([22 VAC 40-910-60](#)). Any client has the right to obtain their client record upon written or verbal request. The client must be permitted to review or obtain a copy of his client record with the following exceptions:

1. Information that the department, agency or provider is required to keep confidential pursuant to federal and state laws or regulations.
2. Information that the department, agency or provider may withhold from the client pursuant to the Freedom of Information Act ([§ 2.2-3700](#) et seq. of the Code of Virginia).

3. Information that would breach another individual's right to confidentiality. When the material requested includes confidential client information about individuals other than the client, the parts of the client record relating to other individuals will be redacted.

## **6.10 Intra-department disclosures**

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([22 VAC 40-910-100](#)). The Commissioner of the Virginia Department of Social Services, the State Board of Social Services and their agents shall have access to all social services client records pursuant to [§ 63.2-104](#) of the Code of Virginia.

Information may be exchanged between eligibility and service workers in the LDSS in pursuance of their official duties. Under no circumstances shall a service worker withhold information from the eligibility staff which may affect an individual's eligibility for assistance.

## **6.11 Inter-department disclosures**

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The LDSS may furnish information regarding an individual to other LDSS without a release from the individual when the disclosure is for purposes directly related to the administration of the programs.

## **6.12 Disclosure of information without an individual's consent**

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The Virginia Administrative Code permits release of information without a client's written permission under the following circumstances.

([22 VAC 40-910-20](#)). a. A court of competent jurisdiction has ordered the production of client records and the department, agency or provider does not have sufficient time to notify the client or legally responsible person before responding to the order.

b. For research purposes as provided in [22 VAC 40-910-50](#).

The Commissioner of the Virginia Department of Social Services, the State Board of Social Services and their agents shall have the discretion to release nonidentifying statistical information. A client's written permission is not required in order to release nonidentifying statistical information.

The Commissioner of the Virginia Department of Social Services, the State Board of Social Services and their agents do not have to obtain consent from the client to obtain or review client records.

## **6.13 Disclosing information to and obtaining information from outside sources**

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With certain exceptions found in the APS chapter, an individual or his or her legal authorized representative shall give written permission before the individual's information may be given to a person or LDSS or obtained from other sources.

### **6.13.1 Consent process**

([22 VAC 40-910-20](#)). As part of the application process for public assistance or social services, the client or legally responsible person must be informed of the need to consent to a third-party release of client information necessary for verifying his eligibility or information provided. Whenever a person or organization that is not performing one or more of the functions delineated in [22 VAC 40-910-80 C](#) or does not have a legitimate interest pursuant to [22 VAC 40-910-100](#) requests client information, the person or organization must obtain written permission from the client or the legally responsible person for the release of the client information unless one of the conditions delineated in this subsection exists. A client's authorization for release of client information obtained by the department, agency or provider also satisfies this requirement.

The "Consent to Exchange Information" form is recommended for use when several agencies are involved in providing services to the same family or individual. The use of this form does not change any state or federal laws regarding confidentiality or supersede current program policy regarding the type of information that may be released. Under a memorandum of understanding, all human services agencies are mandated to accept a properly completed Consent to Exchange Information form without requiring an individual or his or her representative to complete another release form. The [Consent to Exchange Information form and instructions](#) are available on the DSS internal website.

The service worker shall read and discuss the consent forms with the individual upon initial contact and at subsequent times when appropriate to ensure that an individual understands his or her rights.

### **6.13.2 Access rules**

The individual, the individual's guardian and/or guardian ad litem, and the individual's authorized representative shall be accorded access to all eligibility and service material contained in LDSS files except for mental health records under certain conditions. An individual's representative is anyone designated to act in the individual's interest. The individual or the representative shall be required to furnish proper identification. A proper release of information, including those not required to be notarized, shall be obtained. The service worker shall verify the representative's authorization either by viewing a guardian certification, court order, notarized statement from the individual, or by speaking directly to the individual.

### **6.13.3 Exceptions**

An exception to the individual's right to see his or her own records is in the case of mental health records, including psychiatric and psychological examination reports. These records may not be personally reviewed by the individual when the treating physician has made a written statement that, in his or her opinion, a review of such records by the individual would be injurious to his or her physical or mental health or well-being.

## **6.14 Judicial proceedings**

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In the event a subpoena is issued for a case record or for any LDSS representative to testify in connection with an investigation or proceeding not directly related to the administration of a public assistance program, the local director shall immediately notify the LDSS attorney. The LDSS shall follow the advice of the LDSS attorney.

## **6.15 Appendix A: Forms**

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The following forms may be used to address confidentiality issues in Adult Services and Adult Protective Services cases. These forms are located on the [Adult Services forms page](#) of the DSS internal website.

### **Assurance of Confidentiality**

This form is used to document requests for information on an individual and also to document appropriate assurances that the LDSS requesting the information will keep the information confidential.

### **Consent to Exchange Information**

This form can be used to assist the LDSS in obtaining information needed from other agencies to determine an individual's eligibility for services or benefits.

### **Disclosure Log**

This form may be used to list agencies that have received information from an LDSS about an individual.

### **Interagency Consent to Release Confidential Information for Alcohol or Drug Patients**

This form can be used to request information from or send information to a substance abuse program.