

# 9

## CONFIDENTIALITY

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# 9

## CONFIDENTIALITY

### 9.1 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. To ensure the open disclosure of public documents, the Virginia Freedom of Information Act (FOIA) provides for the release of information that is not protected by Federal law, Code of Virginia or Virginia Administrative Code (VAC) provisions for maintaining confidentiality.<sup>1</sup>

In performing its statutory duties, such as conducting an investigation of a report of alleged child abuse or maintaining the central registry, the Department (VDSS) and the local department of social services (LDSS) will collect and maintain personal information about an individual. Having recognized that the extensive 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.<sup>2</sup> The Virginia FOIA (Code of Virginia [§ 2.2-3700](#) et seq.) provides a person access to records in the custody of public officials. The provisions of the Virginia FOIA and the Government Data Collection and Dissemination Practices Act apply to the VDSS and to the LDSS.

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 FOIA, the Government Data Collection and Dissemination Practices Act or VAC provision. Given the sensitive

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<sup>1</sup> The Virginia Freedom of Information Act provides the statutory authority for the release of information between public agencies and the public. Please see Code of Virginia [§ 2.2-3700 B](#).

<sup>2</sup> Code of Virginia [§ 2.2-3800 B and C](#).

nature of a CPS investigation, the LDSS must ensure that the release of information does not violate any Federal law, Code of Virginia, or VAC provisions.

In all instances of requests for release of information, LDSS are strongly encouraged to seek legal advice and counsel prior to responding to a request the release of information under the Virginia Freedom of Information Act, the Government Data Collection and Dissemination Practices Act, or any other Code of Virginia provision.

## 9.2 Mandatory release of information

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The Code of Virginia and the VAC mandate the release of information to specific parties under certain circumstances:

([22 VAC 40-705-160 A](#)). In the following instances of mandatory disclosure the local department shall release child protective services information. The local department may do so without any written release.

### 9.2.1 Report Information to Commonwealth's Attorney and law enforcement

Code of Virginia § [63.2-1503 D](#) requires the LDSS to report certain cases of abuse and neglect to the local Commonwealth's Attorney and to law enforcement.

([22 VAC 40-705-160 A1](#)). Report to attorney for the Commonwealth and law enforcement pursuant to § [63.2-1503 D](#) of the Code of Virginia.

#### 9.2.1.1 Complaints or reports that LDSS shall report to Commonwealth's Attorney and law enforcement

The LDSS shall contact the local attorney for the Commonwealth when a report or complaint is received alleging abuse or neglect involving:

- The death of a child;
- An injury or threatened injury to the child in which a felony or Class 1 misdemeanor is also suspected;
- Any sexual abuse, suspected sexual abuse or other sexual offense involving a child, including the use or display of the child in sexually explicit visual material, as defined in § [18.2-374.1](#);
- Any abduction of a child;
- Any felony or Class 1 misdemeanor drug offense involving a child; or
- Contributing to the delinquency of a minor in violation of § [18.2-371](#).

### 9.2.1.2 Information to be provided to Commonwealth's Attorney and law enforcement

The LDSS shall provide the local attorney for the Commonwealth and the local law enforcement agency with records of any complaints of abuse or neglect involving the victim or the alleged perpetrator.

The LDSS cannot allow reports of the death of the victim from other local agencies to substitute for direct reports to the attorney for the Commonwealth and the local law-enforcement agency.

The LDSS shall make available all information upon which the report is based including the name of the complainant and the records of any complaint of abuse or neglect involving the victim or the alleged perpetrator.

### 9.2.2 Report information to regional medical examiner's office

Code of Virginia [§ 63.2-1503 E](#) requires the LDSS to report certain cases of abuse and neglect to the regional medical examiner's office. The VAC restates that requirement.

[\(22 VAC 40-705-160 A2\)](#). Report to the medical examiner's office pursuant to [§§ 32.1-283.1 C](#) and [63.2-1503 E,F](#) of the Code of Virginia.

The LDSS should also advise the regional medical examiner's office if the report or complaint was accepted and if an investigation will be conducted.

### 9.2.3 Court mandated disclosure

[\(22 VAC 40-705-160 A3\)](#). If a court mandates disclosure of information from a child abuse and neglect case record, the local department must comply with the request. The local department may challenge a court action for the disclosure of the case record or any contents thereof. Upon exhausting legal recourse, the local department shall comply with the court order.

The LDSS cannot disregard a court order for the release of information. If the LDSS believes the disclosure is inappropriate, it may contest the request for information through legal counsel. If, after hearing the LDSS's arguments to maintain the confidentiality of the Child Protective Services (CPS) information, the court still orders the information to be released, the LDSS shall comply. LDSS are encouraged to seek advice from the agency's legal counsel in these matters.

#### 9.2.4 Release of certain information to the complainant

([22 VAC 40-705-160 A4](#)). When a family assessment or investigation is completed, the child protective services worker shall notify the complainant/reporter that either a complaint/report is unfounded or that necessary action is being taken.

Generally, the information released to the complainant pertains to whether the complaint or report was unfounded or the LDSS took necessary action. Disclosing information to a complainant is limited to the procedures for notification of the disposition required by the VAC and this guidance manual, except as may otherwise apply under required or discretionary disclosure in this section.

#### 9.2.5 Release of information to Military Family Advocacy Program

([22 VAC 40-705-160 A10](#)). The local department shall disclose and release to the United States Armed Forces Family Advocacy Program child protective services information as required pursuant to [22 VAC 40-720-20](#).

The VAC defines Family Advocacy Program representative:

([22 VAC 40-705-10](#)). "Family Advocacy Program representative" means the professional employed by the United States Armed Forces who has responsibility for the program designed to address prevention, identification, evaluation, treatment, rehabilitation, follow-up and reporting of family violence, pursuant to [22 VAC 40-720-20](#).

The VAC also provides the LDSS with the authority to release information, when appropriate to a representative of the Family Advocacy Program.

([22 VAC 40-720-20 A](#)). Information regarding child protective services reports, complaints, investigations and related services and follow-up may be shared with the appropriate Family Advocacy Program representative of the United States Armed Forces when the local agency determines such release to be in the best interest of the child. Provision of information as addressed in this chapter shall apply to instances where the alleged abuser or neglecter is a member (or the spouse of a member) of the United States Armed Forces. In these situations coordination between child protective services and the Family Advocacy Program is intended to facilitate identification, treatment and service provision to the military family.

([22 VAC 40-720-20 B](#)). In founded complaints in which the abuser or neglecter is an active duty member of the United States Armed Forces, or the spouse of a member residing in the member's household, information regarding the disposition, type of abuse or neglect, and the identity of the abuser or neglecter shall be provided to the appropriate Family Advocacy Program representative. This notification shall be made in writing

within 30 days after administrative appeal rights of the abuser or neglecter have been exhausted or forfeited.

The military member shall be advised that this information is being provided and shall be given a copy of the written notification sent to the Family Advocacy Program representative.

When needed by the Family Advocacy Program representative to facilitate treatment and service provision to the military family, additional related information shall also be provided to the Family Advocacy Program representative.

### 9.2.6 Release information to Department of Child Support Enforcement

([22 VAC 40-705-160 A11](#)). Child protective services shall, on request by the Division of Child Support Enforcement, supply information pursuant to § [63.2-103](#) of the Code of Virginia.

### 9.2.7 Provide information to citizen review panels

The Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 USC § 5101 et seq.), requires case-specific information about child abuse and neglect reports and investigations be disclosed to citizen review panels, when requested. The VAC addresses the CAPTA requirement.

([22 VAC 40-705-160 A7](#)). Pursuant to the Child Abuse Prevention and Treatment Act, as amended (42 USC § 5101 et seq.), and federal regulations (45 CFR § 1340), the local department shall provide case-specific information about child abuse and neglect reports and investigations to citizen review panels when requested.

CAPTA §106(b)(2)(v)(iii) requires the establishment of not less than three (3) citizen review panels. Any release of information to citizen review panels shall be in accordance with the confidentiality provisions of this chapter. §§ [63.2-104](#) and [63.2-105](#) of the Code of Virginia provide the foundation for the disclosure of findings or information about a case of child abuse or neglect.

#### 9.2.7.1 Children's Justice Act/Court Appointed Special Advocate Advisory Committee (CJA/CASA)

The major purpose of the advisory committee to the Court Appointed Special Advocate (CASA) Program is to advise the Criminal Justice Board on all matters relating to the CASA Program and the needs of clients served by the program. The fifteen members are knowledgeable of court matters, child welfare, and juvenile justice issues and representatives of state and local interests.

### 9.2.7.2 The Child Abuse and Neglect Committee of the Family and Children's Trust Fund (FACT)

Code of Virginia [§ 63.2-2100](#) establishes the [Family and Children's Trust Fund \(FACT\)](#) which was created as a public-private partnership to address family violence through improved prevention and treatment efforts and increased public awareness. FACT is overseen by a Board of Trustees who are appointed by the Governor and meets at least quarterly. FACT raises and distributes funds that support local community programs and statewide public awareness projects, and through its Child Abuse and Neglect Committee they advise the VDSS, Board of Social Services, and the Governor on matters concerning programs for the treatment and prevention of abused and neglected children and their families.

### 9.2.7.3 State Child Fatality Review Team

Code of Virginia [§ 32.1-283.1](#) establishes the State Child Fatality Review Team to develop and implement procedures to ensure that child deaths occurring in Virginia are analyzed in a systematic way (see Section 11 Child Deaths).

## 9.2.8 Release information to Court Appointed Special Advocate

([22 VAC 40-705-160 A12](#)). The local department shall release child protective services information to a court appointed special advocate pursuant to [§ 9.1-156](#) of the Code of Virginia.

Code of Virginia [§ 9.1-151](#) establishes the CASA Program administered by the Department of Criminal Justice Services. The program provides services to children who are subjects of judicial proceedings involving allegations that the child is abused, neglected, in need of services or in need of supervision. Code of Virginia [§ 9.1-156](#) provides that, upon presentation by a court appointed special advocate of the order of his appointment and upon specific court order, the LDSS shall permit the advocate to inspect and copy any records relating to the child involved in the court case.

## 9.2.9 Release information to guardian ad litem

([22 VAC 40-705-160 A13](#)). The local department shall release child protective services information to a court appointed guardian ad litem pursuant to [§ 16.1-266 E](#) of the Code of Virginia.

Code of Virginia [§ 16.1-266](#) provides that a guardian ad litem shall be appointed by a court before the commencement of any court proceeding involving a child who is alleged to be abused or neglected. One of the purposes of appointing a guardian ad litem is to obtain first-hand, a clear understanding of the situation and needs of the child. Upon presentation by a guardian ad litem of the court order of his appointment



and upon specific court order, the LDSS shall permit the guardian ad litem to inspect and copy any records relating to the child involved in the court case.

### 9.3 Discretionary release of information

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In some instances, disclosure of information in a CPS case record by the LDSS will be mandated. In other instances, disclosure of certain information will be prohibited or limited.

This section addresses the discretionary release of information from a CPS case record by the LDSS. Code of Virginia §§ [63.2-104](#) and [63.2-105](#) provide the statutory framework for collecting and maintaining information gathered during a CPS investigation and related proceedings and for the release of such information and to whom it may be released.

In all instances of requests for release of information, LDSS are strongly encouraged to seek legal advice and counsel prior to responding to the request.

When an LDSS exercises its discretion to release confidential information to any person who meets one or more of the criteria set forth, the LDSS shall be presumed to have exercised its discretion in a reasonable and lawful manner as noted in Code of Virginia § [63.2-105](#).

#### 9.3.1 Burden on LDSS to ensure the proper release of information

Any time the LDSS does release information contained in a CPS investigative record, the LDSS must ensure that the release of information is proper and consistent with Federal law, the Code of Virginia, and the VAC. The VAC emphasizes the need for the LDSS to ensure the confidentiality of the information gathered during a CPS investigation and the proper release of any confidential information.

([22 VAC 40-705-160 D](#)). Prior to disclosing information to any of the individuals or organizations, and to be consistent with § [63.2-104](#) of the Code of Virginia, pursuant to § [63.2-1500](#) of the Code of Virginia, the local department must be satisfied that:

1. The information will be used only for the purpose for which it is made available;
2. Such purpose shall be related to the goal of child protective or rehabilitative services; and
3. The confidential character of the information will be preserved to the greatest extent possible.

When a question arises concerning whether certain information contained in a CPS investigative record should be released, the LDSS should consult the local city or county attorney.

### 9.3.2 Identity of complainant and collaterals to remain confidential

([22 VAC 40-705-160 C](#)). The local department shall not release the identity of persons reporting incidents of child abuse or neglect, unless court ordered, in accordance with [§ 63.2-1526](#) of the Code of Virginia, 42 USC § 5101 et seq., and federal regulations (45 CFR Part 1340).

([22VAC 40-705-160 B](#)). The local department may use discretion in disclosing or releasing child protective services case record information, investigative and on-going services to parties having a legitimate interest when the local department deems disclosure to be in the best interest of the child. The local department may disclose such information without a court order and without a written release pursuant to [§ 63.2-105](#) of the Code of Virginia.

Federal and state regulations specify that the identity of persons reporting suspected incidents of child abuse or neglect should be protected. However [§ 63.2-105](#) of the Code of Virginia and [22VAC40-705-160 B](#) allow the LDSS to disclose the contents of CPS records and information to persons with a legitimate interest, which specifically includes a law enforcement officer and attorneys for the Commonwealth.

Other circumstances may arise where the name of the complainant must be disclosed. This might include court proceedings where the information provided by the complainant is necessary for a full disclosure of the child's situation. Neither state law nor federal regulations provide for confidentiality of the identity of persons providing information on a child abuse and neglect case through collateral contact by the worker. Therefore, individuals making complaints or providing information through collateral contacts should be informed that the LDSS will maintain the information confidential to the greatest extent possible, but cannot guarantee its confidentiality.

Section [63.2-1514](#) of the Code of Virginia provides that the subject of an unfounded investigation may petition the circuit court to obtain the identity of the complainant if the person believes the complaint was malicious or made in bad faith. The circuit court may order the release of this information.

## 9.4 Virginia Freedom of Information Act

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Code of Virginia [§ 2.2-3700](#) (Virginia FOIA) requires that official records held by public agencies are to be open to inspection. Any individual may exercise his or her Virginia FOIA rights to see public information in the custody of any public agency. It provides procedures for requesting records and responding to those requests. It also provides exceptions to providing certain information to individuals who make requests pursuant to the Code of Virginia.

The provisions of Code of Virginia [§ 2.2-3700](#) et seq. apply to the VDSS and the LDSS. Except as otherwise specifically provided by law, all official records shall be open to inspection and copying by any citizen of the Commonwealth during the regular office hours of the custodian of such records. This is a summary of these provisions.

In all instances of requests for release of information, LDSS are strongly encouraged to seek legal advice and counsel prior to responding to the request.

#### **9.4.1 LDSS shall make an initial response to the individual within five days**

When a request for the release of information under the Virginia FOIA is made, the LDSS shall make an initial response to the individual requesting the information **within five (5) working days** after the receipt of the request.

#### **9.4.2 Requesting party shall specify what information is requested**

The requesting party shall designate the requested records with reasonable specificity. The requesting party does not need to specify that the release is to be in accordance with the Virginia FOIA to invoke the provisions of Code of Virginia [§ 2.2-3700](#) et seq. and the time limits for response by the LDSS.

#### **9.4.3 Initial response by LDSS may vary**

The LDSS shall respond to the request for the release of information in one of the following methods:

- The requested records shall be provided to the requesting citizen.
- If the LDSS determines that an exemption applies to all of the requested records, the LDSS may refuse to release such records. The LDSS shall provide to the requesting party a written explanation as to why the records are not available; making specific reference to the applicable Code of Virginia sections that make the requested records exempt.
- If the LDSS determines that an exemption applies to a portion of the requested records, the LDSS may redact that portion of the records that should remain confidential. The LDSS shall disclose the remainder of the requested records and provide to the requesting party a written explanation as to why certain portions of the record are not available to the requesting party, making specific reference to the applicable Code of Virginia sections making that portion of the requested records exempt. Any reasonably segregatable portion of an official record shall be provided to any person requesting the record after the deletion of the exempt portion.
- If the LDSS determines that it is practically impossible to provide the requested records or to determine whether they are available within the five-

work-day period, the LDSS shall inform the requesting party. The LDSS shall have an additional **seven (7) working days** in which to provide one of the three (3) preceding responses.

#### **9.4.4 LDSS may petition the court for additional time to respond**

The LDSS may petition the appropriate court for additional time to respond to a request for records when the request is for an extraordinary volume of records and a response by the LDSS within the time required by the Code of Virginia will prevent the LDSS from meeting its operational responsibilities. Before filing this petition, however, the LDSS shall make reasonable efforts to reach an agreement with the requesting party concerning the production of the records requested.

#### **9.4.5 LDSS may charge a fee**

The LDSS may make reasonable charges for the copying, search time, and computer time expended in providing the requested information.

#### **9.4.6 Requesting information that does not exist**

The LDSS is not required to create or prepare a particular requested record if it does not already exist. The LDSS may, but is not required to, abstract or summarize information from official records or convert an official record available in one form into another form at the request of the citizen. The LDSS shall make reasonable efforts to reach an agreement with the requesting party concerning the production of the records requested.

#### **9.4.7 LDSS shall take action upon request**

Failure to make any response to a request for records constitutes a violation of Code of Virginia [§ 2.2-3700](#) et seq. and will be deemed a denial of the request.

#### **9.4.8 Exceptions to release of information**

Code of Virginia [§ 2.2-3700](#) et seq. provides exceptions from the provisions of the Virginia FOIA, but may be disclosed by the LDSS at the LDSS's discretion, except where such disclosure is prohibited by law. For the exceptions to the Virginia FOIA specific to social services, see Code of Virginia [§ 2.2-3705.5](#).

Pursuant to [§ 63.2-1516.1](#) (B) of the Code of Virginia, in all complaints or reports that are being investigated jointly with law enforcement, no information shall be released by the LDSS unless authorized by the law enforcement officer, their supervisor or the local Commonwealth Attorney.

In all instances of exceptions to release of information, LDSS are strongly encouraged to seek legal advice and counsel prior to responding to the request.

## 9.5 Government Data Collection and Dissemination Practices Act

(§ [2.2-3806.3](#) of the Code of Virginia). Upon request and proper identification of any data subject, or of his authorized agent, grant the data subject or agent the right to inspect, in a form comprehensible to him:

- a. All personal information about that data subject except as provided in subdivision 1 of § [2.2-3705.1](#), subdivision 1 of § [2.2-3705.4](#), and subdivision 1 of § [2.2-3705.5](#).
- b. The nature of the sources of the information.
- c. The names of recipients, other than those with regular access authority, of personal information about the data subject including the identity of all persons and organizations involved and their relationship to the system when not having regular access authority, except that if the recipient has obtained the information as part of an ongoing criminal investigation such that disclosure of the investigation would jeopardize law-enforcement action, then no disclosure of such access shall be made to the data subject.

### 9.5.1 General provisions for collecting confidential data

The LDSS shall adhere to the following principles of information practice to ensure safeguards for personal privacy:

- There shall be no personal information system whose existence is secret.
- Information shall not be collected unless the need for it has been clearly established in advance.
- Information shall be appropriate and relevant to the purpose for which it has been collected.
- Information cannot be obtained by fraudulent or unfair means.
- Information shall be accurate and current.

### 9.5.2 The rights of the data subjects

Upon request and proper identification of any data subject, or of his authorized agent, the LDSS shall grant such subject or agent the right to inspect, in a form comprehensible to such individual or agent:

- All personal information about that data subject except as provided in Code of Virginia §§ [2.2-3705.1](#), [2.2-3705.4](#), and [2.2-3705.5](#).
- The nature of the sources of the information.

- The names of recipients, other than those with regular access authority, of personal information about the data subject including the identity of all persons and organizations involved and their relationship to the system when not having regular access authority, except that if the recipient has obtained the information as part of an ongoing criminal investigation such that disclosure of the investigation would jeopardize law-enforcement action, then no disclosure of such access shall be made to the data subject.

### 9.5.3 Minimum conditions of disclosure

The LDSS shall comply with the following minimum conditions of disclosure:

- The LDSS shall make disclosures to data subjects required under this chapter, during normal business hours.
- The disclosures to data subjects required under this chapter shall be made (i) in person, if he appears in person and furnishes proper identification, or (ii) by mail, if he has made a written request, with proper identification. Copies of the documents containing the personal information sought by a data subject shall be furnished to him or his representative at reasonable standard charges for document search and duplication.

### 9.5.4 Requesting party may seek representative

The data subject seeking the release of personal information shall be permitted to be accompanied by a person or persons of his choosing, who shall furnish reasonable identification. The LDSS may require the data subject to furnish a written statement granting permission to the organization to discuss the individual's file in such person's presence.

### 9.5.5 Exception to Government Data Collection and Dissemination Practices Act

The provisions of Code of Virginia [§ 2.2-3800](#) et seq. are not applicable to personal information systems maintained by LDSS regarding alleged cases of child abuse or neglect while such cases are also subject to an ongoing criminal prosecution. For additional exceptions to disclosing personal information pursuant to the Government Data Collection and Dissemination Practices Act, see Code of Virginia [§ 2.2-3802](#).

## 9.6 Release information to the alleged abuser or neglector

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### 9.6.1 Alleged abuser or neglector is entitled to information about himself

The alleged abuser or neglector maintains the right to access information about himself, including the right to examine a copy of the automated data systems form subject to the restrictions in this guidance manual. The VAC states:

([22 VAC 40-705-160 A5](#)). Any individual, including an individual against whom allegations of child abuse and/or neglect were made, may exercise his Government Data Collection and Dissemination Practices Act rights to access personal information related to himself which is contained in the case record, including, with the individual's notarized consent, a search of the Central Registry pursuant to [§ 2.2-3704](#) of the Code of Virginia.

### **9.6.2 Alleged abuser or neglector may review medical and psychological information about himself**

The alleged abuser or neglector maintains the right to see medical and psychological information about himself. However, if the treating doctor attached a statement to the medical or psychological information that the alleged abuser's or neglector's access to the information could be harmful to the alleged abuser's or neglector's physical or mental health or well-being as specified in the Code of Virginia [§ 32.1-127.1:03 F](#), the LDSS may withhold access. Otherwise, medical and psychological information must be released on request.

### **9.6.3 No special provisions for the release of information to parent, guardian, or caretaker of the alleged victim child**

The Government Data Collection and Dissemination Practices Act of Virginia does not specifically address a parent's or guardian's right to see the personal information in the record about the child.

If the parent or guardian, whether custodial or non-custodial, requests personal information about the child and the LDSS believes that the release of the information would be contrary to the child's best interest, then the LDSS may deny that request.

If the LDSS believes the release of information would be in the child's best interest, such information may be released with the exception of medical or psychological information to which the treating physician attached a statement that the client's access to the information could be harmful to the client's physical or mental health or well-being. The parent should be referred to the source for access to this information.

The parent, caretaker, or guardian is entitled to access to any personal information about himself that is contained in the CPS record pursuant to the Government Data Collection and Dissemination Practices Act.

### **9.6.4 Reasonable time to edit record for release**

When the alleged abuser or neglector requests information, the VAC provides the LDSS reasonable time to redact or edit the information needing to be protected. The VAC provides:

([22 VAC 40-705-160 A6](#)). When the material requested includes personal information about other individuals, the local department shall be afforded a reasonable time in which to redact those parts of the record relating to other individuals.

The LDSS must ensure that the alleged abuser or neglecter is only provided access to that portion of the record concerning him with safeguards taken to assure the privacy rights of the other persons mentioned in the case record including protecting the name of the complainant.

#### **9.6.5 LDSS must respond to request with reasonable promptness**

When the alleged abuser or neglecter makes a request, pursuant to the Government Data Collection and Dissemination Practices Act, to see his personal information in the case record, the LDSS must respond to this request with reasonable promptness. However, the Virginia FOIA and the Government Data Collection and Dissemination Practices Act contain exceptions. Not all information can be released to the individual making the request.

#### **9.6.6 Alleged abuser or neglecter may designate representative**

The right to access information may be exercised directly by the individual or by any representative of his choice designated by him in writing.

#### **9.6.7 Criminal investigation/prosecution suspends access to records**

Code of Virginia [§ 2.2-3802 7](#) establishes that during a criminal investigation, the alleged abuser's or neglecter's right to access the records of a CPS investigation is suspended. The VAC reflects the statutory intent:

([22 VAC 40-705-160 A9](#)). An individual's right to access to information under the Government Data Collection and Dissemination Practices Act is stayed during criminal prosecution pursuant to [§ 2.2-3802 7](#) of the Code of Virginia.

The provisions for releasing information of a CPS investigation, pursuant to the Government Data Collection and Dissemination Practices Act, are suspended when there is a criminal investigation involving the same case.

Pursuant to [§ 63.2-1516.1](#) (B) of the Code of Virginia, in all complaints or reports that are being investigated jointly with law enforcement, no information shall be released by the LDSS unless authorized by the law enforcement officer, their supervisor or the local Commonwealth Attorney.

#### **9.6.8 Release of information when founded disposition is appealed**

Prior to the LDSS rendering a disposition, the LDSS may only release confidential information to the alleged abuser or neglecter pursuant to the Government Data



Collection and Dissemination Practices Act and consistent with the Code of Virginia and VAC.

The Code of Virginia provides for greater disclosure of the CPS record after the LDSS renders a disposition. Code of Virginia [§ 63.2-1526](#) specifies an alleged abuser's access to the CPS record. If the LDSS has information in its record that has been used in making the founded disposition, the alleged abuser has the right to access that information on appeal. The exceptions are as follows:

- The identity of the person making the complaint.
- Any information which may harm a child.
- The identity of collateral witnesses, when disclosure may endanger his life or safety.
- The identity of any other person, when disclosure may endanger his safety.
- Information prohibited from disclosure by state and federal law.

In general, if the victim's medical records were used in making the founded determination, then the alleged abuser is entitled to see that information.

It is up to the LDSS to use good judgment in deciding what should be released and what should be withheld. The LDSS must be able to adequately defend its decision when challenged. This issue underscores the need for LDSS to consult with legal counsel when records have been requested.

#### **9.6.8.1 Appellant shall be informed of procedures for making information available and withholding information**

The appellant has the right to be informed of the procedure by which information will be made available or withheld. If information is withheld, the appellant shall be advised of the general nature of such information, the reason the information is being withheld, and the appellant's right to petition the juvenile and domestic relations court, or family court, to enforce any request for information which has been denied.

#### **9.6.8.2 Appellant's access to CPS record is stayed during criminal proceeding**

Code of Virginia [§ 63.2-1526 C](#) stays (i.e., suspends) the appellant's right to access the LDSS record during the administrative appeal process whenever a criminal charge involving the same appellant for the same conduct involving the same victim is proceeding.

## 9.7 Release information to legitimate interests

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If an LDSS receives a request for information about a CPS case, and release of that information is not mandated or prohibited by Federal law, the Code of Virginia, or the VAC, then release of that information is at the discretion of the LDSS. All records and statistical registries of the LDSS and of the local boards, including child protective service records, are confidential. Code of Virginia §§ [63.2-104](#) and [63.2-105](#) provide access to a person with a legitimate interest when access is in the best interest of the child.

In all instances of requests for release of information, LDSS are strongly encouraged to seek legal advice and counsel prior to responding to the request.

### 9.7.1 Authority to release information when disclosure is not mandated

The VAC summarizes the authority to release information to persons when that release is not mandated.

[\(22 VAC 40-705-160 B\)](#). The local department may use discretion in disclosing or releasing child protective services case record information, investigative and on-going services to parties having a legitimate interest when the local department deems disclosure to be in the best interest of the child. The local department may disclose such information without a court order and without a written release pursuant to § [63.2-104 A](#) of the Code of Virginia.

Each request for or act of disclosure must be individually evaluated. Evaluating the request for information is a two-step process. The first consideration is whether disclosure of the requested information is in the best interest of the child. The second consideration is whether the party requesting the information has a legitimate interest.

### 9.7.2 Definition of legitimate interest

The definition section of the VAC defines legitimate interest as:

[\(22 VAC 40-705-10\)](#). "Legitimate interest" means a lawful, demonstrated privilege to access the information as defined in § [63.2-104](#) of the Code of Virginia.

### 9.7.3 Identify parties with legitimate interest

Individuals and organizations considered to have a legitimate interest include, but are not limited to:

- An agency having the legal or designated authority to treat or supervise a child who is the subject of a complaint.

- The administrator of an institution in cases involving abuse or neglect by an employee of the facility.
- Members of a multidisciplinary team, a family assessment, or a planning team.
- Police, other law-enforcement agency, or Commonwealth's attorney.
- A physician treating an allegedly abused or neglected child.
- A person legally authorized to place a child in protective custody.
- A parent, guardian, or other person who is responsible for the welfare of a child.
- The guardian ad litem for the child.
- Military Family Advocacy Program.
- A grand jury upon its determination that access to such records is necessary in the conduct of its official business.
- Any appropriate state or local agency responsible for child protective services.
- A legislator carrying out official functions.
- Any person engaged in a bona fide research project if the information is absolutely essential to the research purpose. The director of the Division of Family Services must give prior approval.
- A person who is responsible for investigating a report of known or suspected abuse or neglect.
- A state or local government child welfare or human service agency when they request information to determine the compliance of any person with a CPS plan or order of any court.
- Personnel of the school or child day program (as defined in Code of Virginia [§ 63.2-100](#)) attended by the child so that the LDSS can receive information from such personnel on an ongoing basis concerning the child's health and behavior and the activities of the child's custodian.
- A parent, grandparent, or any other person when they would be considered by the LDSS as a potential caretaker of the child in the event the department has to remove the child from his current custodian.

- Pursuant to Code of Virginia [§ 37.2-905.2](#), the Department of Corrections, the Commitment Review Committee, and the Office of the Attorney General may request information from the LDSS about an inmate who is subject to a civil commitment hearing as a sexually violent predator.

The identification of a party as having a legitimate interest must be consistent with Code of Virginia [§ 63.2-105 A](#).