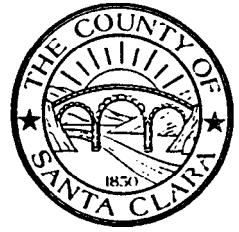


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Steven M. Woodside
County Counsel

March 3, 1993

MEMORANDUM

To: Sylvia Pizzini, Director DFCS
Social Services Agency

From: Rima H. Singh, Deputy ^{RHS} County Counsel

Re: Criminal Prosecutions: Exchange of DFCS
Information with the District Attorney's Office

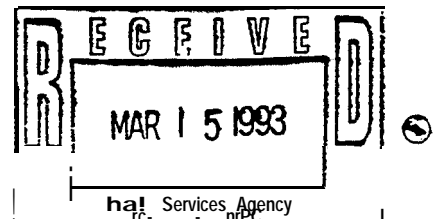
This memorandum sets forth general guidelines for the release of information by the Dept. of Family and Children's Services (DFCS) to the District Attorney's Office (DA) for criminal prosecution purposes.

This memorandum covers social services information and records related to emergency response, family maintenance, and dependency matters. It does not cover adoptions or licensing files.

The scope of these guidelines is limited to the exchange of information between DFCS and the criminal division of the District Attorney's Office only. The same principles do not apply to exchange of information with other parties, eg. defense attorneys in criminal cases.

These guidelines supersede all prior memoranda from the County Counsel's Office. However, prospective changes are anticipated because the Hon. Leonard Edwards has formed a committee to formulate rules which may significantly modify our approach.

Chief Assistant County Counsel Am Miller Ravel
Chief Deputies: Roben Meniffee, Susan G Levenberg, William I. Anderson



CRIMINAL PROSECUTIONS RELATED TO CHILD ABUSE, MOLESTATION, OR
NEGLECT:

The Affidavit Requirement:

In the past DFCS has required the DA's Office, DA investigators, or law enforcement officers to file a declaration under penalty of perjury stating that access to juvenile records and documents is necessary and relevant in connection with a criminal investigation of the abuse perpetrator. In July 1992, the law was changed to allow the DA in criminal proceedings access to these reports. Therefore, the DA is not required to file an affidavit to obtain these reports.

Emergency Response/Child Protective Services Reports:

The District Attorney's Office and law enforcement agencies involved in an investigation of abuse/neglect have access to all telephone, written, and investigative ER/CPS reports.⁵

Family Maintenance:

Where no dependency exists, DFCS workers may not release family maintenance records and information without court authorization. An exception to this rule allows for the release of relevant information if it can be justified as being related to the provision of services. For instance, you may release information which is related to the DA's abuse or neglect investigation.

Release of information is also authorized when a recipient requests that the Court be made aware of the his or her efforts to comply with the program (e.g., counselling, parenting classes). You should obtain a written consent to release information from your client prior to releasing the relevant information. Your client should be made aware that this is a general release of information which includes the "good" and the "bad" aspects of his or her compliance with the program.

-
1. Welf.& Inst. Code §827; Juvenile Court Local Rule 295.
 2. See Penal Code sections 11167 and 11167.5.. Arguably the exchange of information is authorized by Welf.& Inst. Code section 10850 because the criminal investigation and prosecution are related to the provision of social services. Welf. & Inst. Code section 827 and Rule 29 of the Local Juvenile Rules of Court authorize the exchange of information with the District Attorney's Office.
 3. Welf. & Inst. Code 510850.

Dependency Records and Reports:

Pursuant to the Juvenile Court's Local Rule 295 and Welfare and Institutions Code section 827, the DA or law enforcement agencies involved in investigation or prosecution of child abuse or neglect, may inspect the following:

1. Juvenile Court Petitions.
2. Social Worker's Reports.
3. All documents filed in the juvenile court case.
4. Documents made available to the social worker in making her report.

In order to obtain this information, the law enforcement agencies must file a declaration under penalty of perjury stating that access to these documents is necessary and relevant in connection with a criminal investigation. (Local Rule 29J; Welf. & Inst. Code, § 827.)

The DA has direct access to the juvenile court's files. (Welf. & Inst. Code, s 827.) No affidavit is required. However, because of Welfare and Institutions Code section 10850; we do not give the DA and law enforcement agencies blanket access to the files maintained by DFCS. The DA is given any and all relevant records and information.

The authorization to release information does not extend to the following:

1. Materials that are irrelevant to the criminal proceedings. Example: Father charged with sexual molestation. Mother is not involved in the criminal matter but is undergoing drug testing. Mother's drug testing results may not be released.
2. The parent's psychological treatment records and evaluations may be subject to additional privacy objections and, therefore, should not be released absent a Court order.⁵ The DA must direct requests for these records to the Custodian of Records for the physician, therapist, or evaluator who generated the reports.
3. The DA or law enforcement agencies are not entitled to information which is unrelated to a social services' program purpose of identification, investigation, prevention, and prosecution of child abuse/neglect related to the recipient of social services. For instance, when a law enforcement agency requests information to prove that a dependent child (your client) was the perpetrator of a crime, release of information is not authorized.

4. The rationale for this conclusion is that Welf. & Inst. Code §10850 does not permit the release of social services information which is not directly related to program purposes. Release of information directly relevant to child abuse prosecutions may be justified; however, release of remotely relevant information is not permitted.

8. E.g. Welf. & Inst. Code, 55328; Evid. Code, gl010, et seq.; constitutional right to privacy.

MISCELLANEOUS EXCEPTIONS TO CONFIDENTIALITY:

1. Criminal Acts on SSA premises or Against Social Workers:

DFCS workers should disclose the client/recipient's name, physical description, and address to a law enforcement agency investigating or gathering information regarding a criminal act committed in a DFCS office or against a county worker while involved in the administration of social services (Welf. & Inst. Code, §10850, subd. (f).)

An example of a criminal act would be an assault on a social worker by a recipient, or an assault by a client on another client in a SSA office.

The reference to "criminal acts" does not include welfare fraud. The prosecuting DA, or DA investigator, is entitled to all relevant information related to welfare fraud because the prosecution of fraud is a purpose directly connected to the provision of services. (Welf. & Inst. Code, §10850.)

2. Felony Warrants:

Upon a written request from the head of a law enforcement agency, or his/her duly authorized representative, specifying that a felony warrant has been issued, the DFCS worker may release the client's name, address, telephone number, birthdate, and social security number. (Welf. & Inst. Code, §10850.3; SDSS Manual §19-004.412.)

3. Deceased Client:

Upon a request from the head of a law enforcement agency, DFCS may release the deceased client's name, address, telephone number, birthdate, social security number, and physical description. The release of information must be preceded or followed up by a written request from the head of the law enforcement agency specifying that the agency is otherwise unable to adequately identify the deceased. (Welf. & Inst. Code, §10850.7; SDSS Manual §19-004.4.)

4. Consent:

Your client may consent in writing to release of factual information related to eligibility which is provided solely by the client. (Welf. & Inst. Code, §10850.2.) Because DFCS files contain information which goes beyond this narrow exception, consent is generally an insufficient basis for release of confidential information unless there is program purpose which justifies the release of information.

TESTIMONY PURSUANT TO DA's SUBPOENAS:

The following are general guidelines on the appropriate response if you are subpoenaed by the DA to testify in a criminal proceeding related to child abuse, molestation, or neglect.

1. Call the DA and discuss why the DA wants you to testify, what testimony is sought, etc. Also ask the DA whether you may remain on telephone standby or reschedule if there are scheduling conflicts.

2. Call the County Counsel's Office for advice if you are unsure as to whether release of information is justified.

As a general rule you may testify without Juvenile Court authorization in the following cases:

a. where both the DA and the defendant parent have access to the records or information on which your testimony is based, eg., juvenile court dependency records.

b. Home maintenance cases where both you and your client agree that relevant information should be released, or the DA has obtained the Juvenile Court's authorization.

c. Where the DA requests that you testify to the facts relevant to the investigation and prosecution of a child abuse or neglect case.

3. Make arrangements with the DA so that you may leave your file at the office when you testify.

Note that parties other than the DA do not have broad access to DFCS records and information. For instance, a non-parent molester has no right of access to social services information. Even parents in Juvenile Court cases do not have blanket access to social services' information; e.g., the parent does not get our ER/CPS report and is not privy to the name of the abuse-reporting party. Such persons must obtain Juvenile Court authorization in order to gain access to DFCS records and information, and they usually do file a motion in advance of the trial to get pertinent records.

In light of the above, you could face a very sticky situation if you show up with your DFCS file and the defendant insists that s/he has a right to review your file. The prudent course of action is to discuss your testimony with the DA ahead of time and make sure that the DA has the necessary records which you may need to refresh your memory while you are testifying.

wppprob2:1833#38-42

cc: Richard)'Neil
Anelda Qualtieri
Diane Bennett