
RELEASE OF INFORMATION TO LAW ENFORCEMENT AGENCIES

I. BACKGROUND

An analysis of confidentiality prepared by County Counsel as it pertains to law enforcement agencies is attached. It describes which law enforcement officials may obtain information, what may be disclosed, and how it is obtained.

II. PROCEDURES

It is not necessary to supply copies of case material on demand to agencies. The requestor can leave a list of the copies wanted, and these can be sent later.

In Emergency Response, Continuing Child Welfare and Adoptions, SSPMs will review all cases before allowing law enforcement representatives access.

In the Dependency Investigation, the unit supervisor is responsible for the case review to remove material that is not to be disclosed prior to review.

III. ANALYSIS

Effective January 1, 1991, Santa Clara County Rule of Court 29, Section I, Subsection J, Part 2, permits the district attorney's office and the police and sheriff's department to obtain access to specified portions of juvenile records maintained by the Social Services Agency simply upon presentation of a declaration signed under penalty of perjury stating that access is "necessary and relevant in connection with and in the course of a criminal investigation." A copy of the local rule is attached hereto as "Attachment 1."

In the past, law enforcement agencies have been required under Welfare and Institutions Code section 827 to file a motion for an order granting disclosure of confidential juvenile records with the presiding judge of the juvenile court in order to gain access to the juvenile records maintained by SSA. While it appeared from Welfare and Institutions Code section 827(a) that a declaration could be used, other code sections such as Welfare and Institutions Code section 10850 and Penal Code sections 11167 and 11167.5 independently covered the same information and made it confidential. As a practical matter, in most cases where outside law enforcement personnel seek information from the court by motion, SSA often has no objection to inspection of SSA records other than its concern for preserving confidentiality. Essentially, Rule 29(I)(J)(2) operates as a standing order of the juvenile court permitting local law enforcement personnel to obtain access to juvenile records by declaration instead of a formal motion, as permitted by W&I section 827(a).

Social Services Agency continues to have a duty to protect confidential juvenile records, and should give careful scrutiny to all law enforcement requests for disclosure. Further, SSA should prevent disclosure of information that could be detrimental to the child's best interests.

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First, it must be kept in mind that whatever information is provided to law enforcement personnel is likely, under the rules of criminal discovery, to be eventually disclosed by law enforcement to defense counsel who represent the parents of the minor in any criminal action against the parents. Thus, delivering information to law enforcement is tantamount to delivering information to the parents of the minor. Therefore, it is essential that the SSA supervisor or manager who makes the decision to permit law enforcement personnel inspect SSA records in a given case first inspect the records in order to determine whether there is any information that should be protected even from law enforcement personnel to safeguard the best interests of the child.

Information that should not be disclosed includes, but is not limited to, the following: confidential attorney-client communications between SSA and County Counsel; the names, addresses and phone numbers of confidential foster parents; child abuse and neglect referrals (Form SC 22) where the name of reporting party is confidential, and adoption records. In cases where law enforcement seeks such records, they should be referred to the Office of County Counsel for direction. In such cases, County Counsel will request that the law enforcement agency file a formal noticed motion for a court order authorizing disclosure with the presiding judge of the juvenile court. This will afford the opportunity for County Counsel to seek appropriate protective orders on behalf of SSA.

Second, the Social Services Agency is not mandated to provide access to all information contained in agency records upon presentation of a Rule 29 (I)(J) declaration. The local rule provides that the Agency is "authorized" to permit outside investigative agencies to inspect SSA records; the local rule does not require that the agency permit inspection. Thus, SSA should always exercise its discretion in determining whether or not the particular information sought should be withheld in order to protect the best interests of the child whose records are being sought.

Third, it should be remembered that Rule 29(I)(J)(2) applies to law enforcement agencies; it does not apply to others who seek discovery of confidential agency records. Thus, all non-law enforcement personnel must file a formal motion for a court order authorizing disclosure with the presiding judge of the juvenile court prior to disclosure by SSA.

Fourth, any requests for inspection of agency records must be reviewed and approved on the supervisory or program manager level to ensure consistency.

Fifth, in most cases, the documents to be disclosed will include: social studies, collateral expert reports such as medical reports or psychological evaluations, probation reports, correspondence to or from the parents of the minor, SIU reports, school reports, SC 909 "Log" notes, and other investigative or evaluative documents.

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And sixth, when in doubt about whether to provide law enforcement with access to a particular piece of information, always contact County Council for advice.

Social workers are not authorized to share their files with attorneys or investigators from the district attorney's Criminal division or other outside law enforcement agencies without the approval of their supervisor or program manager. Care should be taken to distinguish the deputies in the District Attorney's Office Criminal Division from the deputies in the juvenile dependency division: the latter, as counsel for the minor in the dependency action, are entitled to inspect the minor's records maintained by the agency.

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ATTACHMENT1

SUPERIOR COURT FOR THE STATE OF CALIFORNIA
county of santa clara

J. Release of Information Relating to Juveniles:

1. Discovery of Juvenile Records:

In all cases in which a person or agency seeks access to Juvenile Court records, including records maintained by the Juvenile Court Clerk, the Probation Department or the Department of Family and Children's Services, and arrest records maintained by a law enforcement agency, the person or agency shall file a petition with the Supervising Judge of either the Delinquency or Dependency Courts. The petition shall set forth with specificity the materials sought and the relevance of the materials to the underlying action. The petition shall be supported by a declaration of counsel and if necessary a memorandum of points and authorities.

The person or agency seeking the records shall give notice to all necessary parties. (Welfare and Institutions Code 827.)

2. Discovery of Juvenile records by District Attorney:

a. Subject Documents

The Supervisor of the Department of Family and Children's Services' Court Unit or the Probation Department's Court Unit or the Supervisor's designee is hereby authorized to ALLOW the District Attorney or a child protective agency representative (police or sheriff's department or county welfare department) to inspect the following documents:

1. A petition filed in any Juvenile Court proceeding.
- ii. Any reports of the Probation Officer or Social Worker.
- iii. All other documents filed in any suchcase or made available to the Probation Officer in making his or her report, or to the Judge or other hearing officer, and thereafter retained by the Probation Officer, Social Worker, Judge or other hearing officer.