

NASW/APWA NATIONAL PROFESSIONAL RESOURCE CENTER  
ON CHILD ABUSE AND NEGLECT

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DEALING WITH ISSUES OF CONFIDENTIALITY  
IN CHILD PROTECTIVE SERVICES

JULY 1979

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The material was made possible by Grant No: 90-C-1727 from the National Center on Child Abuse and Neglect, Children's Bureau, ACYF, OHDS, DHEW.

DEALING WITH ISSUES OF CONFIDENTIALITY  
IN CHILD PROTECTIVE SERVICES

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During the past few years social workers have become increasingly concerned with various issues around confidentiality. Has the public the right to public agency records? Have clients the right to see their records? This has been emphasized by the consumer movements, concerns about privacy protections, and the clients rights to examine personal files. As an outgrowth of the Freedom of Information Act<sup>1</sup> and the Federal Privacy Act<sup>2</sup>, several states have enacted privacy laws which vary in statute but, which offer solutions to some of the legal aspects of issues which social workers have been debating. It is because of these statutes and the development of explicit public welfare policies, that social workers today can see their way out of the ethical quandary of accountability vs. confidentiality. Many laws and guidelines dictate the circumstances under which we may be accountable to our clients, for whose benefit the services are designed, as well as to the agency responsible for service provision. However, problems around the issue of confidentiality remain unresolved. This paper will address those issues which relate to Child Protective Services: access to CPS records, expungement, feedback to reporters, multidisciplinary teams, and police requests for information.

Access to CPS Records

In Child Protective Services, certain problem areas continue around issues of confidentiality and the rights of various individuals. The problems arise in part because the child abuse and neglect reporting statutes may have different, and often tighter, confidentiality clauses than those applying to other programs in social services or public welfare. The language in most Child Abuse and Neglect reporting laws or regulations designates persons and agencies who should be allowed access to case identifying information.

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<sup>1</sup>Freedom of Information Act, U.S. Code 551.

<sup>2</sup>Federal Privacy Act of 1974, Public Law 93-579, Dec. 31, 1974, U.S. Code 552a.

These include persons and agencies who are or could be involved with the diagnosis or treatment of the case. In many states the information can be released to researchers (upon approval by State Department) as well as for the purpose of program planning, evaluation, or audit efforts. These access regulations raise concerns because it is often difficult to guard against unauthorized disclosure. Furthermore, widespread access to personal and family data could unreasonably compromise the right to privacy of the children and families involved. Most agencies make disclosure decisions on a case-by-case basis, with clarification on how that information is to be used. Since it is difficult for an individual at a state "hot line" to make such determinations, all requests for information should funnel through the child protective agency at the local level, where legitimacy of the request can be screened. Requests should be approved only when the information would be in the best interest of protecting the child, furthering the treatment provided the family, or legitimate research.

What about the family's right to access of the information which is being maintained about them? Much like the freedom of information statutes that apply to all records kept by the agency, parents should be allowed access to information about themselves. They should have the right to request that information contained in the report be amended or expunged. An appeal procedure should be established if their request is denied. However, in the case of child protective services in particular, there is information which cannot be revealed. Specifically, the identity of the reporter usually must remain confidential. Consequently, a parent cannot arbitrarily be provided access to all the information in the case record. Difficulty often arises when the reporter's name is alluded to several times in the narrative portion of the case record. Unfortunately, this means that in many existing case records, the amount of information which could be open to clients is minimal. Although little can be done to improve existing records, much can be done to improve the situation in new case recording. It is a useful guideline, therefore, to require that all case recording be done keeping in mind that the clients may see this at any time.

Client requests for access to records is often based on their concern about

what is being written about them and how it may be used. If clients are involved, from the first contact, with the assessment of their problems, identification of their strengths and the planning of the services, they are less likely to feel that unknown information is being kept about them. This means of course that protective service workers must actively attempt to involve the family in this process. The workers must allow the family to include their perception of the incident and themselves in the narrative. If the worker sees the situation differently, that too should be included and documented. The process is not always comfortable or easy. People are resistant to being assessed and are not used to such openness. To facilitate the process, the worker must constantly be alert to seek out the strengths and assets of a family, and share those observations with the family. As indicated in the report by Anna Freed<sup>3</sup>, shared case recording can serve as a valuable casework tool to increase communication in the casework relationship. For example, many parents are never aware that the worker might find them "attractive," "dependable" or "mature." On the other hand, they may equally be unaware that their behavior seems non-dependable or immature.

As part of the diagnosis and treatment planning process, the client should be told who else in the community will be contacted and asked to share information. Although, as mentioned previously, such information sharing is sometimes provided for in the state law, it is always good practice to obtain a release of information signed by the parents. This adds legal solidity to the information sharing. This too can be difficult in the early stages of the relationship when parental suspicion, fear and hostility often prevail. However, it is important that the clients realize that the information-gathering is for the purpose of identifying services appropriate to their problems and needs and that the information will not be used unprofessionally.

#### Expungement Records

States vary in the regulations they have made regarding expungement of files.

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<sup>3</sup>Freed, Anne O., "Client's Rights and Case Records," Social Casework, vol. 59, no. 8, October 1978, p. 461.

But in Child Protective Services, references to expungement have generally applied to the removal of an unfounded report of suspected child abuse and neglect that has been sent to the state central registry. The procedure to follow for expungement of such records at the local level is often ignored. Although the information gathered by the CPS worker provides valuable information if a subsequent report is made, the agency must nevertheless destroy the case file. The agency may keep a statistical file card for administrative accountability. It must be emphasized, however, that making a determination of "unfounded" and purging such records must be based on sound judgement during the investigative stage. Reports have been deemed "unfounded" because of poor investigations and sparse information. It is vital that the worker review with the supervisor all the information gathered. If the worker and the supervisor both agree that there is no reason to suspect abuse or neglect, and both can comfortably sign off on that determination, then the case should be closed and the case file expunged.

#### Feedback to Reporters

Potential reporters of suspected child abuse and neglect often do not report because they feel that "nothing happens" when they do. This sense of futility can often be attributed to lack of feedback provided to the reporters. Some states allow no feedback to be provided to any reporter. Others allow information to be given to professionals who will be involved with identification or treatment, and yet others allow for giving feedback to anyone who has reported.

For the purposes of public accountability, community relations, and courtesy, the CPS agency should ensure that certain procedures follow the receipt of a report of suspected abuse or neglect. This should be afforded to anyone who has taken the responsibility and initiative to report. However, the amount of specific case information given to the reporter should be directly related to the "need to know." Physicians, educators, nurses, mental health workers, etc. who will continue their involvement with the family after the report should be advised of the status of the investigation and service planning. Friends, neighbors and relatives whose motives for reporting and utilization of the information are often unknown should be provided with information which lets them know that a response has been made to the report. Many localities

handle feedback to lay reporters in the form of a letter which thanks them for their concern and indicates that as a result of their call, an investigation will be (or has been) conducted. The letter provides no information which could be damaging to the family, but does acknowledge that the report is not lost.

### Multi-disciplinary Teams

The issue of confidentiality relevant to the sharing of identifying information within a multi-disciplinary team is important in that many communities have not addressed the issue at all. Among those communities which have addressed confidentiality several options have been identified:

- . cases are not identified by name (this option does not work well in small rural communities).
- . confidentiality agreements are signed by members of the multi-disciplinary team. (This option works best when the members of the team are constant, i.e. same individuals attend all meetings whether actually involved with specific case or not.)
- . client is advised that the team is sharing information and signs a consent for release of information.

Each of these team options is viable depending upon its location, its membership and the client-agency relationship. Issues of confidentiality should not obstruct the information sharing within the multidisciplinary team. The development of a working team requires, among other things, considerable faith in the importance of the contribution of each of its members in case management and case planning. When representatives of the lay community are selected for membership on the team it is usually based on the fact that the individual possesses the qualities necessary to fulfill the purposes of the group. Very often the role of the lay member becomes one of advocate of community expectations or advocate for the client. The lay member should be considered a peer member of the team and subject to the same procedures for maintaining confidentiality of information.

### Police Requests for Information

Concerns are sometimes voiced by CPS workers that information they have gathered during a non-criminal investigation is used by law enforcement officers in a criminal investigation of the case. The CPS workers feel that providing law enforcement officers with information about the family is a violation of the parents' rights, particularly if the information is incriminating. Police involvement in investigations of suspected abuse and neglect varies from state to state. In some states, law enforcement is identified as one of the agencies mandated to receive reports. In such localities cross-sharing of investigative information has become part of the policy and procedure. It is in those locations in which CPS investigates all reports of suspected abuse and neglect that the concerns are generally expressed. Disclosure of information to law enforcement may be provided for in state statute or regulation; however, decisions to do so should be based on the hope that:

- . such disclosure is in the best interest of the child
- . the information will be used only for the purpose for which it is made available
- . the purpose will be related to the goal of child protective services
- . the confidential character of the information will be preserved to the greatest extent possible.

How then does one evaluate a request in terms of the above criteria? The most important consideration would be whether or not a crime has been committed: e.g., death of a child, severe assault or life threatening neglect. (In many jurisdictions all cases of sexual abuse must also be reported to the County/District Attorney who decides if criminal charges will be filed.) In any situation in which CPS information is requested for criminal investigations the agency usually has no choice but to share the information with the District Attorney. If a court requests the information, the agency must

comply with the request or contest the request through legal appeal. The agency cannot disregard a court order for release of information.

Although the above procedures can enhance the relationship between social worker and client, there are many times when workers will be uneasy and unacomfortable. Good practice would dictate openness with the client who should know the purpose of and the possible outcomes of the investigation. This has to be weighed against the client's appropriate reluctance to be open in return. However, assurances and practices of confidentiality, sharing of case records, getting signed releases of information should all help to enhance the client's self image and the CPS worker-client relationship.



**END**