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## 8.4 Protocol for Disclosure of Information to Legislators

### Purpose:

Questions repeatedly have been raised about whether Department staff may share information with legislators who are pursuing constituent requests for information. "Constituent requests" refers to instances when a person contacts his/her legislator to assist him/her in a personal or family related matter which involves a client of the Department. The purpose of this protocol is to ensure that staff of this Department respond to these requests in accordance with state and federal law. If a staff member fails to comply with applicable law, he or she exposes himself/herself to possible criminal penalties. Thus, it is very important that we follow applicable laws.


**The Department of Health & Human Services may not provide individual legislators a child protection record or information or access to a child protection record or information. Such disclosure is a commission of a class E crime.**

**In addition, a release from a parent for the Department of Health & Human Services to speak to a legislator or to provide a legislator with the record or access to the record does not create an exception permitting such a disclosure or release of information. All child protection records and information are confidential pursuant to federal and state law. The record is a state record governed by both federal and state law. A release from a parent, or any individual, does not change the confidentiality requirements in federal and state law. The record is a state record and not a parent's record.**

### Legal Base:

In child welfare, confidentiality is governed by State laws and regulations that conform to the Federal child abuse and neglect and child welfare statutory and regulatory standards. Both CAPTA and Title IV-E (including the ASFA amendments) provide safeguards to restrict the use and disclosure of information regarding investigations of child abuse or neglect and information regarding children receiving title IV-E foster care or adoption assistance. Those provisions allow the release of information only to certain persons or agencies that require the information for specified purposes.

Department of Health & Human Services records for all child protection matters, including both court and non-court matters, are confidential, pursuant to 22 M.R.S.A. 4008 and 4008-A. A state statute, however, cannot modify the application of any federal law. The question of access pursuant to federal law, or pursuant to a state confidentiality statute that is required by federal law, depends on the particular terms of the federal law at issue.

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Federal law requires that each state must provide by statute that all records concerning child abuse and neglect are confidential, and that their unauthorized disclosure is a criminal offense.


There are several provisions of federal law that require states to maintain confidentiality of records. Those provisions specifically prohibit the state from sharing information with legislators, including legislative committees, if the information contains “personally identifying information.” (Statistical information is regularly provided to the Legislature.) Maine Law contains similar provisions. The only exception to the federal and state laws prohibiting sharing records with legislators is that the records may be released to a government agency, including a legislative body, conducting an audit or similar activity.

During the summer of 2004, child protection attorneys in the office of the Attorney General specifically asked the Administration of Children and Families (ACF), the oversight agency within the federal DHHS, whether a legislative representative could be given access to confidential files of a constituent under the provisions cited above. ACF advised Maine that such access was not consistent with the federal law requirements.

Based on the federal statutes, Maine statutes, and the opinion of the Administration of Children & Families, an individual legislator may not have access to a specific DHHS child protective record.

### **PROTOCOL FOR DISCLOSURE OF INFORMATION TO LEGISLATORS**

1. A legislator is carrying out responsibility for child protection services in his/her official function when (s)he is involved with a formal established committee which is reviewing child protection services (this should broadly be defined as “child welfare services”) or related legislation, and (s)he is requesting information for the use of that committee in studying child protection issues and/or making decisions regarding them. Even within this function, disclosure of case specific information is prohibited by federal law.
2. A constituent request cannot be considered as an official function of the legislator because (s)he is not responsible for child protective services in that capacity.
3. If a legislator calls one of us in regard to a constituent, we must treat him/her as a third party.
4. We may not provide information about his/her constituent, even if a legislator has provided us with a clear written or oral consent from that constituent.

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5. Not only are we prohibited from providing information about the constituent, we may not provide to the legislator information about any other person in the case.
6. We may always provide general information to legislators regarding the Department's policies and procedures.
7. All of our dealings with legislators should be done in the most helpful and cooperative manner possible while at the same time protecting the confidentiality of clients, whether or not they have authorized us to release information concerning their families.
8. If staff have a difficult time saying no to a legislator, the legislator should be directly referred to the Assistant Attorney General handling any litigation, and if the case is not in litigation, the legislator can be referred to the Child Welfare Program Administrator, the Deputy Director for Child Welfare Services or the Assistant Deputy Director for Child Welfare Services, or to the Chief of the Child Protection Division in the Office of the Attorney General.