

DEPARTMENT OF CHILDREN AND FAMILY SERVICES


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POLICY GUIDE 2008.03

INVESTIGATIVE FILES INVOLVING DEPARTMENT WARDS PROVIDED TO THE COOK COUNTY PUBLIC GUARDIAN

DATE: August 15, 2008

TO: Rules and Procedures Bookholders and Child Protection Staff

FROM: Erwin McEwen, Director 

EFFECTIVE: Immediately

I. PURPOSE

The purpose of this policy guide is to issue new procedures concerning the handling and redacting of investigative files involving Department wards that are provided to the Cook County Public Guardian.

II. PRIMARY USERS

The primary users of these procedures are child protective service workers, child welfare workers, and Department legal staff assigned to the Cook County Juvenile Court.

III. BACKGROUND

In Cook County, the Cook County Public Guardian (Public Guardian) is the appointed attorney and guardian ad litem (GAL) for the majority of minors for whom the Department is awarded legal custody. In accordance with the Abused and Neglected Child Reporting Act (ANCRA) (325 ILCS 5), Juvenile Court Act of 1987 (705 ILCS 405), and Department Rules 300, Reports of Abuse and Neglect; the Department is required to transmit a copy of the report and investigative file to the GAL appointed under the Juvenile Court Act when the a report has been indicated, unfounded, or undetermined and the minor who is the subject of the report is also the minor for whom the GAL has been appointed.

The Public Guardian brought a lawsuit that resulted in a *court order* requiring the Department to implement new procedures for providing investigative files to the Public Guardian. *These procedures only apply to investigations involving children represented by the Cook County Public Guardian.*



The main requirement of the court order is that the Department must provide the Public Guardian with information regarding the identity of the reporter and source of information and all other information regarding the minor contained in the investigative file. The Department and the Public Guardian agreed to settle the remaining issues in the litigation under the terms specified in this policy guide.

IV. FINAL FINDINGS OF ABUSE OR NEGLECT REPORTS INVOLVING DEPARTMENT WARDS

After the report is classified, the person making the classification shall determine whether the child named in the report is the subject of an action under Article II of the Juvenile Court Act of 1987. If the child is the subject of an action under Article II of the Juvenile Court Act, the Department shall transmit a copy of the report to the guardian ad litem appointed for the child under Section 2-17 of the Juvenile Court Act [ANCRA, 325 ILCS 5/714].

Whenever the Department determines that a reported incident of child abuse or neglect from a mandated reporter or any other reporter is "unfounded", the minor's guardian ad litem appointed under the Juvenile Court Act of 1987 may request a review of the investigation within 10 days of the notification of the final finding if the subject of the report is also the minor for whom the guardian ad litem has been appointed [ANCRA, 325 ILCS 5/7.21].

V. INVESTIGATIVE FILES PROVIDED TO THE COOK COUNTY PUBLIC GUARDIAN

When the Department investigative staff have determined that a child abuse and neglect investigation involves a minor represented by the Public Guardian and the Department's Cook County Juvenile Court staff (court staff) have been notified of the report, the court staff will do the following.

- A) Determine what calendar the case is pending in and obtain the complete investigative file.
- B) Redact the investigative files in accordance with the following procedures prior to providing the Public Guardian with a copy of the file. Information redacted from investigative files must be listed on the **CFS 600-3C, Redaction Checklist**, and attached to the file. The legal basis for each redaction must be included in the checklist. The Public Guardian may file a motion before the court hearing the minor's juvenile court case seeking disclosure of the redacted information based upon applicable laws.
 - 1) **Identifying Information Regarding the Reporter, Source and Other Persons with Information**

The identity of the reporter, source and other persons with information shall *not* be redacted from the investigative file and shall be provided to the Public Guardian.

2) LEADS Information

Information indicating that a LEADS check has been conducted by Department staff during the course of an abuse or neglect investigation shall be provided to the Public Guardian, but the actual LEADS report shall be redacted from the investigative file. Investigation case notes or other documentation of arrests and convictions, other than the LEADS report, shall not be redacted. Arrest and conviction information is public information.

3) Information Regarding Minors Represented by the Cook County Public Guardian

Information regarding a minor represented by the Public Guardian shall not be redacted and shall be provided to the Public Guardian. This includes information regarding the minor's foster parents; information regarding prior reports of abuse and neglect; mental health information; substance abuse treatment information; and health/HIV/AIDS information.

4) Information Regarding Persons Other Than Minors Represented by the Cook County Public Guardian

a) Mental Health Information

Mental health information shall be disclosed regarding the parent, guardians of the minors represented by the Public Guardian, or legal custodians of the minors represented by the Public Guardian when the parent, guardian or legal custodian is named as a respondent in the case pending in juvenile court.

Mental health information regarding persons other than the respondent parent/legal guardians and minors represented by the Public Guardian shall only be redacted pursuant to the provisions of the Mental Health and Developmental Disabilities Confidentiality Act. A confidential communication under the Mental Health and Developmental Disabilities Act is any communication made by a recipient of mental health services or another person to a therapist or to or in the presence of other person during or in the connection with the provision of mental health or developmental disability services.

For example, information contained in an investigative note documenting an investigator's interview with a person during which the person disclosed their mental health diagnosis would not be a mental health communication as defined by the Mental Health and Developmental Disabilities Confidentiality Act, and should not be redacted from an investigative file provided to the Public Guardian. However, information regarding a person's diagnosis

received from a provider of mental health services would be considered mental health information and should be redacted from the investigative file unless consent for release is in effect.

b) Substance Abuse Treatment Information

Only substance abuse treatment information as defined by the Code of Federal Regulations [42 C.F.R. 2.12 (a) (ii)] shall be redacted from an investigative file provided to the Public Guardian. Substance abuse treatment information is defined as alcohol or drug information obtained by a federally assisted drug or alcohol program for the purpose of treating alcohol or drug abuse, making a diagnosis for treatment, or making a referral for treatment.

For example, an investigative note documenting an investigator's conversation with a foster parent in which the foster parent discussed their substance use and treatment would not be protected under the Code of Federal Regulation, and should not be redacted from an investigative file provide to the Public Guardian. However, information regarding a person's substance abuse treatment received directly from a qualified provider of substance abuse treatment would be consider protected information as defined by the Code of Federal Regulation, and should be redacted from an investigative file provide to the Public Guardian.

c) Health Information

Health information should only be redacted from investigation files as required by the Healthcare Insurance Portability and Accountability Act (HIPPA) and applicable regulations, and the AIDS Confidentiality Act [410 ILCS 305/1 *et.seq.*].

d) Identifying Information Regarding Minors Not Represented by the Cook County Public Guardian

An investigative file may contain information about minors other than those represented by the Public Guardian. Any identifying information regarding these minors should be redacted from the investigative file, but any information regarding the relationship between the minor and the minor represent the Public Guardian should not be redacted. The content of the minor's conversation with the investigator shall not be redacted. Each such minor referenced in the report shall be identified by initials or first name so that the content of report remains comprehensible.

e) Other

If the investigative file contains information that should be redacted for reasons not listed in this policy guide, then the appropriate juvenile court personnel shall file a motion before the juvenile court seeking to prevent the disclosure of the information in accordance with the provisions of ANCRA and/or other applicable laws.

VI. ATTACHMENT

CFS 600-3C, Redaction Checklist

This form can be ordered through Central Stores and is also available on the Department's T: Drive.

VII. QUESTIONS

Questions concerning this policy guide can be directed to the Office of Legal Services, 160 North LaSalle Street, Sixth Floor, Chicago, Illinois 60601, 312/814-2481 or 312/814-2401.

VIII. FILING INSTRUCTIONS

Place this policy guide immediately after page 16 of Procedures 431, Confidentiality of Personal Information of Persons Served by the Department of Children and Family Services.

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