### 8230 Confidential Information Not for Release to the Public

LPPH ~~December 2009~~ DRAFT 6747-CCL

Policy

A judge may order the release of confidential material in a court hearing or by court order. If the request for records is the result of a subpoena, the Licensing staff handling the subpoena discusses the release of information with the deidentifier. For policy and procedures regarding receipt of a subpoena, refer to [OP-4105](http://www.dfps.state.tx.us/handbooks/Operating_Policy/OP-4105_Subpoena.asp) DFPS Subpoena Policy and Procedures.

If it appears necessary to share information with a permit holder that is not subject to disclosure, Licensing staff consults with the supervisor and the state office attorney.

The table below identifies the information that must **not** be released to the public, provides the rationale for not releasing the information, and lists any applicable exceptions to the restrictions:

| Confidential (Not for Release) | Exceptions |
| --- | --- |
| The name of reporter and the reporter’s identifying information  **Rationale**  The Attorney General’s Open Records Decision No. 176, September 9, 1977, states that the identity of a reporter alleging a possible violation of minimum standards at a child-care operation may not be disclosed. | Information identifying the person who made a report resulting in an investigation may only be released as provided in 8231 Confidential Information That May Be Released in Certain Situations. |
| The name and identifying information about someone contacted during an investigation who makes a new allegation that is unrelated to the report being investigated See [6260](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_6000.asp#LPPH_6260) Confidentiality of the Reporter’s Identity.  **Rationale**  This person is a reporter with respect to the new allegation, so Open Records Decision No. 177 is applicable, even if Licensing investigates the new allegation as a part of the original investigation. | Information identifying the person who made a report resulting in an investigation may only be released as provided in 8231 Confidential Information That May Be Released in Certain Situations. |
| Children’s last names and identifying information, regardless of whether the children are victims.  **Rationale**  The [Public Information Act](http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.552.htm) (Texas Government Code, Title 5, Chapter 552, Public Information) excludes certain information from disclosure, based on the constitutional and statutory rights of the individuals. Case law supports the exclusion of children’s names, based on their right to privacy. | The identity of a child or information identifying the child in an abuse or neglect investigation is confidential and may not be released except:  • as provided in 8231 Confidential Information That May Be Released in Certain Situations; or  • to the following persons:  1. the child’s parent or prospective adoptive parent;  2. the operation that was cited for a deficiency as a result of the investigation; or  3. the single-source continuum contractor (SSCC) for foster care redesign when:  a. the SSCC subcontracts with the operation;  b. the operation has signed a release of information; and  c. the operation was cited for a deficiency as a result of the investigation.  *DFPS Rules, 40 TAC* [*§745.8491*](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8491) |
| Information obtained through criminal history checks regarding conviction, indictment, criminal complaint, or deferred adjudication  **Rationale**  Government Code [§411.114](http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.411.htm#411.114) prohibits the release of criminal history checks to unauthorized persons or entities. | Authorized persons or entities may receive criminal history information in certain situations. See Government Code [§411.114(a)(6) and (7)](http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.411.htm#411.114). |
| Information received from another agency, division, or person, if that information is confidential under law  Examples are:  • CPS and APS files on abuse or neglect investigations, including the name of the alleged, designated, or sustained perpetrator in an abuse or neglect report;  • police investigation reports; and  • medical records, including records of psychological examinations  **Rationale**  The information is confidential according to statutes and may not be released. | The *findings* related to child and adult protective services are released to a child-care operation, when appropriate.  See:  [5331](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_5300.asp#LPPH_5331) Acting on Abuse or Neglect Findings in a DFPS Central Registry Report  [6280](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_6000.asp#LPPH_6280) Referring a Report of Abuse or Neglect for Investigation When New Allegations Are Received During an Investigation  [6632](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_6600.asp#LPPH_6632) Notification to the Alleged Perpetrator for an Abuse or Neglect Investigation  [7727](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_7600.asp#LPPH_7727) Emergency Release |
| Certain private information may be constitutionally protected, including:  • documentation for risk evaluations; and  • information pertaining to pending court cases to which the state is a party.  When requests for this information are received, the worker must *immediately* ask a Licensing attorney to send a written request to the Office of the Attorney General for an opinion on the private nature of the information.  **Rationale**  Government Code, Title 5, Chapter [552](http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.552.htm), Public Information Act prohibits the release of certain private information to unauthorized persons or entities. | Exceptions to the Public Information Act may include the release of:  • private information to certain authorized persons or entities;  • information related to litigation of a criminal or civil nature; and  • settlement negotiations to which the state is a party. |
| Pending investigations  **Rationale**  Government Code, Title 5, Chapter [552](http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.552.htm)*,* Public Information Act prohibits the disclosure of information pertaining to an open investigation, but does require disclosure of investigations upon completion of the investigation. | See [8122](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_8000.asp#LPPH_8122) Providing Details About an Operation’s Deficiencies to determine what can be released about a pending investigation. |
| The Social Security number of anyone in an operation.  **Rationale**  Due to identity theft concerns, social security numbers are confidential. | N/A |
| Licensing files on abuse or neglect investigations, including the name of the alleged, designated, or sustained perpetrator in an abuse or neglect report.  **Rationale**  Licensing’s investigations of abuse or neglect are generally confidential based on Human Resources Code [§40.005](http://www.statutes.legis.state.tx.us/Docs/HR/htm/HR.40.htm#40.005) and Licensing confidentiality rules. | a. Licensing’s investigations of abuse or neglect may be released to the following parties in the relevant situations:  1. DFPS staff, including volunteers, as necessary to perform their assigned duties;  2. the parent of the child who is the subject of the investigation or the alleged perpetrator in the investigation;  3. an attorney ad litem, guardian ad litem, or court appointed special advocate of an alleged victim of child abuse or neglect;  4. the alleged perpetrator;  5. law enforcement;  6. a member of the state legislature when necessary to carry out that member’s official duties;  7. an operation cited for a deficiency as a result of the investigation;  8. a single-source continuum contractor (SSCC) for foster-care redesign that subcontracts with the operation that is cited for a deficiency as a result of the investigation, but only with a signed release from the operation;  9. an administrative law judge, or a judge of a court of competent jurisdiction in a criminal or civil case arising out of an investigation of child abuse or neglect, if he or she:  A. provides notice to DFPS and any other interested parties;  B. determines, after reviewing the information, including audio or videotapes, that the disclosure is essential to the administration of justice and will not endanger the life or safety of any individual; and  C. includes in his disclosure order any safeguards that the court finds appropriate to protect the interest of the child involved in the investigation; and  10. a prospective adoptive parent of the child who is the subject of the investigation or who is the alleged perpetrator in the investigation, according to the Texas Family Code [§162.006](http://www.statutes.legis.state.tx.us/Docs/FA/htm/FA.162.htm#162.006).  b. The parent of a child who is not the subject of or the alleged perpetrator in the investigation but was a collateral witness during the investigation is entitled to the portion of the investigation record related to their child.  (c) A social study evaluator may obtain a complete, unredacted copy of any investigative report regarding abuse or neglect that relates to any person residing in the residence subject to the social study, as provided by Texas Family Code §107.05145.  *DFPS Rules, 40 TAC* [*§745.8491*](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8491http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8491)  The *findings* of an abuse or neglect investigation are released to a child-care operation, when appropriate.  See:  [5331](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_5300.asp#LPPH_5331) Acting on Abuse or Neglect Findings in a DFPS Central Registry Report;  [6280](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_6000.asp#LPPH_6280) Referring a Report of Abuse or Neglect for Investigation When New Allegations Are Received During an Investigation  [6631](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_6600.asp#LPPH_6631) Notifying the Operation of the Results of an Investigation  [6632](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_6600.asp#LPPH_6632) Notification to the Alleged Perpetrator for an Abuse or Neglect Investigation  [7727](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_7600.asp#LPPH_7727) Emergency Release |
| Information that may interfere with an ongoing law enforcement investigation or prosecution.  **Rationale**  40 TAC [§745.8493](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8493) indicates CCL may not release portions of Licensing records to anyone if the information may interfere with an ongoing law enforcement investigation or prosecution. | Any information in a Licensing record that may interfere with an ongoing law enforcement investigation or prosecution may only be released as provided in 8231 Confidential Information That May Be Released in Certain Situations.  *DFPS Rules, 40 TAC* [*§745.8493(a)(1)*](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8493) |
| The location of a family violence shelter or information pertaining to a person who was provided family violence services  **Rationale**  Information pertaining to the location of a family violence shelter or a person who was provided family violence services is confidential according to 40 TAC [§745.8493](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8493). | Information pertaining to the location of a family violence shelter or a person who was provided family violence services may only be released as provided in 8231 Confidential Information That May Be Released in Certain Situations.  *DFPS Rules, 40 TAC* [*§745.8493(a)(3) and (4)*](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8493) |
| The location of a "victims of trafficking shelter center" (as defined in Government Code §552.138) or information about a person who was provided services at a victims of trafficking shelter center.  **Rationale**  Information pertaining to the location of victims of trafficking shelter center or a person who was provided services at a victims of trafficking shelter center is confidential according to 40 TAC [§745.8493](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8493). | Information pertaining to the location of a victims of trafficking shelter center or a person who was provided services at a victims of trafficking shelter center may only be released as provided in 8231 Confidential Information That May Be Released in Certain Situations.  *DFPS Rules, 40 TAC* [*§745.8493(a)(5) and (6)*](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8493) |
| Photographs or audio or visual recordings, depictions, or documentations of a child in Licensing records  **Rationale**  Photographs or audio or visual recordings, depictions, or documentations of a child in Licensing records are confidential according to 40 TAC §745.8495. | We may provide a copy of a photograph or an audio or visual recording, depiction, or documentation of a child in Licensing records to the following parties in the relevant situation:  1. DFPS staff, including volunteers, as necessary to perform their assigned duties;  2. law enforcement for the purpose of investigating allegations of child abuse or neglect, failure to report child abuse or neglect, or false or malicious reporting of alleged child abuse or neglect;  3. an administrative law judge or a judge of a court of competent jurisdiction in a criminal or civil case to which the inspection or investigation is relevant;  4. the parent of the child; and  5. any other person authorized by state or federal law to have a copy.  The following persons may review a photograph or an audio or visual recording, depiction, or documentation of a child in Licensing records, but may not have a copy:  1. an attorney ad litem, guardian ad litem, or court appointed special advocate of the child;  2. the operation;  3. a single-source continuum contractor (SSCC) for foster-care redesign that subcontracts with the operation, but only with a signed release from the operation,; and  4. a prospective adoptive parent of the child, as provided in Texas Family Code [§162.006](http://www.statutes.legis.state.tx.us/Docs/FA/htm/FA.162.htm#162.006).  *DFPS Rules, 40 TAC §745.8495* |

#### 8231 Confidential Information That May Be Released In Certain Situations

LPPH DRAFT 6747-CCL (new item)

Policy

The following information is confidential and may not be released except in certain situations:

1. the name of the reporter and the reporter’s identifying information, including anyone who makes new allegations during the course of the investigation that are unrelated to the report being investigated;

2. any child’s last name or information identifying the child in an abuse or neglect investigation, regardless of whether the child is a victim;

3. information that may interfere with an ongoing law enforcement investigation or prosecution;

4. the location of a family violence shelter or information pertaining to a person who was provided family violence services; or

5. the location of a "victims of trafficking shelter center" (as defined in Government Code §552.138) or information pertaining to a person who was provided services at a victims of trafficking shelter center.

This information may only be released to the following parties in the relevant situations:

a. to DFPS staff, including volunteers, as necessary to perform their assigned duties;

b. to law enforcement for the purpose of investigating allegations of child abuse or neglect or false or malicious reporting of alleged child abuse or neglect;

c. to a member of the state legislature when necessary to carry out that member’s official duties; and

d. to any other individuals ordered by an administrative law judge or judge of a court of competent jurisdiction.

CCL staff, in consultation with the Office of the General Counsel, may withhold any information in its records if the release of that information would endanger the life or safety of any individual.

DFPS Rules, 40 TAC [§745.8493](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=19&ch=745&rl=8493)

#### 8232 How to Determine if a Person is a Prospective Adoptive Parent

LPPH DRAFT 6747-CCL (new item)

Policy

Before releasing any confidential information listed in [8230](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_8000.asp#LPPH_8230) Confidential Information Not for Release to the Public to a prospective adoptive parent, DFPS staff must first determine that the requestor is a prospective adoptive parent by verifying with the CPA:

• that the person has been selected as the prospective adoptive parent for the child; or

• that the person has shown interest in being the prospective adoptive parent of the child.

## 8300 Responding to Requests From Parents and Managing Conservators

LPPH ~~December 2009~~ DRAFT 6747-CCL

Policy

Licensing staff assist parents and managing conservators by providing information to help them make informed decisions.

Licensing staff or trained volunteers respond to parents’ or a managing conservator’s request for information about how an operation is regulated.

Staff also provide information when parents report alleged violations of the law or rules.

Procedure

Licensing staff provide certain types of information, as explained in the table below.

|  |  |
| --- | --- |
| If parents … | then Licensing staff … |
| request educational materials … | follow the procedures explained in [Appendix 8000-1](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_px_8000.asp#LPPH_apx8000_1): Educational Materials. |
| need permits or forms … | • refer parents to the DFPS Web site for permit and inspection, appropriate; or  • advise parents to request from the permit holder or operator a copy of the operation inspection forms or follow-up letters. |
| have a child in DFPS conservatorship … | must share all information with CPS staff. |
| need general information … | must follow the procedures in [8100](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_8000.asp#LPPH_8100) Information for General Release. |
| allege that a child care operation has violated the law or minimum standard rules … | must follow the procedures in [6200](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_6000.asp#LPPH_6200) Assessing and Processing Intake Reports.  When forwarding a request for details about an abuse or neglect investigation to the deidentifier for the region, staff must follow the procedures in [8200](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_8000.asp#LPPH_8200) Protecting Confidential Information. |

See [8230](http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_8000.asp#LPPH_8230) Confidential Information Not for Release to the Public if a parent requests information related to:

a. an investigation;

b. a photograph,

c. an audio or visual recording; or

d. other depictions or documentations of a child.

## *In 8700, "Disability Rights Texas" replaces "Advocacy, Inc."*

## 8700 Responding to Requests From Disability Rights Texas

LPPH ~~December 2009~~ DRAFT 6747-CCL (revised title)

Policy

Disability Rights Texas is the federally funded and authorized protection and advocacy system for Texans with disabilities.

The federal Developmental Disabilities Assistance and Bill of Rights Act allows DFPS to release confidential records to Disability Rights Texas when it is representing an individual or investigating crimes related to:

• a complaint about the treatment of a DFPS client; or

• a complaint about a DFPS client’s abuse or neglect case (including APS, CCL, and CPS cases).

The Act grants Disability Rights Texas staff special access to Licensing records to carry out their duties, including access to records on abuse and neglect investigations. Employees of Disability Rights Texas are not required to formally request information related to a Disability Rights Texas client.

42 USC [§§15041-15045](http://uscode.house.gov/view.xhtml?req=granuleid%3AUSC-prelim-title42-chapter144-subchapter1-partC&saved=%7CKHRpdGxlOiBzZWN0aW9uOjE1MDQxIGVkaXRpb246cHJlbGltKSBPUiAoZ3JhbnVsZWlkOlVTQy1wcmVsaW0tdGl0bGUtc2VjdGlvbjE1MDQxKQ%3D%3D%7CdHJlZXNvcnQ%3D%7C%7C0%7Cfalse%7Cprelim&edition=prelim)

Procedure

Licensing staff must take the following steps:

• Respond promptly when Disability Rights Texas requests information *related to a Disability Rights Texas client*. Expedite the response, regardless of whether Disability Rights Texas requests an expedited response.

When it is not clear whether a request for information is client-related, contact the program specialist responsible for releasing information. (Disability Rights Texas staff do not have the same rights to Licensing records when they request information on behalf of a friend or family member, rather than as part of their work with Disability Rights Texas)

• Send all Disability Rights Texas requests through the regional de-identifier.

• Do not charge Disability Rights Texas for copies.

• Note in the record:

• the information provided;

• to whom the information was provided; and

• the purpose of providing it.