

---

# Guidelines for the Retention and Release of Children's Records

---

Revised October 1, 2010

---

Office of Family Safety

---



## Table of Contents

Overview.....	2
Definitions.....	3
Confidentiality.....	4
Retention of Records.....	4
Sharing Records with Children and Young Adult.....	4
Sharing Records with Potential Caregivers.....	6
Agency Contact Information.....	7

### Attachments:

- A. General Counsel Opinion April 28, 2009
- B. General Counsel Opinion November 17, 2009
- C. Chapter 2009-43, Laws of Florida
- D. State Contact List for Single Points of Contact

## Overview of Chapter 2009-43, Laws of Florida

The purpose of these guidelines is to provide guidance on the retention and release of children’s records as directed by Chapter 2009-43, Laws of Florida, which:

- Creates s. 39.00145, F.S., to direct the process of releasing case records to children in, or formerly in, the Department’s care. Key components of the legislation include:
  - maintenance of complete and accurate records;
  - minimum standards for record content;
  - individuals authorized to request and receive the record;
  - provision of record at no cost to certain individuals; and
  - exemptions for releasing specific information.
- Creates s. 39.202(2)(c), F.S., to ensure potential caregivers of children in out-of-home care have the information needed to make an informed decision regarding placement and care of a child.
- Amends s. 39.202(7), F.S., to provide for the timely notification of youth (within 90 days after leaving the Department’s custody) and their caregiver on how to obtain a case record.
- Amends s. 39.202(7), F.S., to require case records be maintained until the youngest alleged victim among the subjects of the record has reached 30 years of age. One distinct exception to this policy involves adoption records which are to be permanently maintained.

## Definitions

**Authorized party** are those individuals listed in s. 39.00145, F.S., entitled to request a child's case record and are limited to the child, the child's caregiver, the child's guardian ad litem, and the child's attorney. This policy does not preclude those individuals listed in s. 39.202(2), F.S., from requesting access to confidential records for authorized purposes.

**Caregiver** is defined as those individuals specifically identified in s. 39.00145, F.S., which includes:

- parents,
- legal custodians,
- permanent guardians,
- foster parents,
- employees of a residential home, institution, facility, or agency at which the child resides, and
- other individuals legally responsible for a child's welfare in a residential setting.

**Child protection system** is any program or entity having involvement with children known to have been the subject of a child protective investigation, and/or dependency proceedings resulting in in-home case management services or out-of-home (relative and licensed) placements, or adoption.

**Custodian of the record** is the party (entity) that has physical custody of the record and is responsible for initial redaction and ensuring the file is a complete and accurate representation of the child's case record. Community-Based Care Lead Agencies are the custodians of the records they generate as part of their contract with the state and are bound by the requirements of Florida's public records law and must provide records directly to the requestor. (See Attachment 1 – General Counsel Legal Opinion dated April 28, 2009)

**Lifebook** is a photo album or binder to document a child's family history, placements, and important life events. Comprised of actual photographs, drawings, and written words, the Lifebook provides the child with sufficient answers to his or her past. Except for a current photograph of the child, all photographs should be maintained in the child's Lifebook, not in the case record. As an essential casework activity, the Lifebook must be updated regularly and maintained throughout childhood, from birth to adulthood.

**Public records request** is any request for information identified as confidential under Chapter 39, F.S.

**Redaction** is the removal of protected, confidential information prior to the release of a record.

**Single Point of Contact** is the designated individual at the investigative or case management entity responsible for coordinating and ensuring the complete case record is retrieved for the purposes of fulfilling a request for records.

## Confidentiality

An authorized party is entitled to a complete and accurate copy of a case record. Confidential information regarding other individuals (adult or child) contained in a case record must be redacted if the information is specifically confidential by state or federal law. This information includes, but is not limited to:

- ◇ Social Security Numbers;
- ◇ Medical/HIPAA related information;
- ◇ Reporter information (child protective investigations); and
- ◇ Records and client information of domestic violence centers.

## Retention of Records

Chapter 2009-43, Laws of Florida, amends s. 39.202(7), F.S., to require case records be maintained until the youngest alleged victim among the subjects of the record has reached 30 years of age. One distinct exception to this policy involves adoption records which are to be permanently maintained.

Local record retention policies shall be revised as necessary to comply with this requirement.

## Processing and Sharing Records with Youth and Young Adults

### Timeframes

When the legislature created s. 39.00145, F.S., outlining the release of records to children, s. 39.202(7), F.S., was also amended to provide for the timely notification of youth (within 90 days after leaving the Department's custody) and their caregiver on how to obtain a case record.

Existing public records law (s.119.07, F.S.) states that all record requests from authorized parties must be responded to promptly and in good faith. The only delay permitted is the reasonable time allowed to retrieve the record, to review the record and redact those portions that are exempt, and copy the record.

### Processing Record Requests

When an employee of the Department, Sheriff's office, or Community-Based Care Lead Agency receives a written or verbal record request or request for confidential information, he or she should immediately transfer the notification in writing to the agency's single point of contact (SPOC) with all information necessary for proper identification of the requestor.

To assist in the tracking and documenting processing of the record request, each agency SPOC should keep a list of all requests detailing the name of requestor, the date requested, the date redacted records are forwarded to Regional Counsel or the entity's designated reviewer, and the record release date to the authorized party.

Initial redaction of the record should be completed by the party or entity most familiar with the child. For the purposes of this guideline, this person will be referred to as the custodian of the record. Community-Based Care Lead Agencies are the custodians of the records they generate as part of their contract with the state and are bound by the requirements of Florida's public records law and must provide records directly to the requestor. (See Attachment 1 – General Counsel Legal Opinion dated April 28, 2009)

The custodian of the record will keep a log or copy of all redacted information. The copy or log must include the page where the redaction is located and a brief description of what was redacted. A copy of the redacted records or log should also be provided to the SPOC with the original copy of the redacted records.

Based on public records law, upon release of the redacted record the custodian of the record must provide a written explanation for the decision not to include the confidential or exempted material (e.g., HIPAA protected, Social Security Number deleted, etc.). This effort helps the requestor understand why a portion of the document is blacked out and alleviates the requestor's concerns about inappropriately being restricted from access to important information.

Upon receipt of redacted records from the custodian of the record, the SPOC should forward the record to the agency's legal counsel or designated reviewer for final review. Redacted records of child protective investigations conducted by Department staff will be forwarded to the Regional Counsel for final release approval. Records of child protective investigations conducted by sheriffs' offices or case management records compiled by Community-Based Care Lead Agencies or their subcontracted providers will be forwarded to each respective entity's legal counsel or designated reviewer for final release approval.

If at any point it is determined there will be a delay in the ability to respond to the request for the case record in a timely manner, the SPOC will notify the requestor orally or in writing and provide the requestor with the projected date of release.

A good source for more information on the release of public records is the Attorney General's Website located at: <http://www.myflsunshine.com/sun.nsf/pages/Citizens>.

### **Sharing Records with Youth and Young Adults**

Due diligence should be exercised regarding the release of sensitive information. A child's age, maturity level, and the nature of the information being released should determine the manner and setting in which the child or youth obtains the information. The preferred practice is the release of the information in a therapeutic setting.

For requestors who have not obtained the age of majority or have not had a judicial ruling of emancipation the SPOC will encourage the child or youth to review the records in their caregiver or case manager's presence. Failure of the minor to follow this advice will not preclude their access to the record.

Children who leave the care of the Department by adoption may only request their records after they reach the age of majority. (See Attachment 2 – General Counsel Legal Opinion dated November 19, 2009)

To recognize and address a child's ongoing need for information while in licensed out-of-home care, verbal and written explanations must be provided, especially all known information in the case record about the following:

- ◇ family and medical history;
- ◇ reasons why they were removed and cannot safely return home; and
- ◇ names of foster and group homes and reasons for each placement/re-placement.

Appropriate information for release includes the full name and street address of all shelters, foster and group homes, treatment facilities or locations where the child has been placed. It also includes case plans, pre-disposition reports, judicial review reports, court orders, guardian ad litem reports, evaluations and comprehensive assessments, medical health histories, school records and report cards, mental health reports, hospitalization and residential setting records, any letters, photographs and all other information contained in the case record as directed under the law.

One of the most important documents to have available in the child's case record is a copy of the child's Lifebook. Experienced case managers know that for any number of reasons these invaluable books can be lost as a result of a child transitioning placements or even destroyed outright by the child during a fit of anger – having a backup copy available is consistent with best practice principles and goes a long way towards ensuring a child's sense of connection to important life events, pictures, and person information from their past.

When children are kept informed on an ongoing basis not only is a child better prepared for a permanency goal, including adoption, but typically there are less concerns about the need to release the records in a therapeutic setting. National child welfare advocates recommend that every foster child have this important connection (i.e., "Lifebook") to family history and early life experiences and that the information be documented and explained as positively as possible.

## **Processing and Sharing Records with Potential Caregivers**

### **Timeframes**

The Legislature created s. 39.202(2)(s), F.S., to ensure the timely sharing of records with potential caregivers of children placed in out-of-home care. This provision grants caregivers with whom the Department is seeking to place a child, or to whom placement has been granted, access to records of children. The entire child's file may be shared with a potential caregiver and it must be shared prior to placing a child with a caregiver. Any subsequent information following initial placement with a caregiver must be provided to the caregiver in a timely manner. If a child is at risk of harm or is determined to be unsafe upon learning this new information, the information must be provided to the caregiver immediately.

Additionally, pursuant to s. 39.202(7), F.S., a caregiver must be notified within 90 days after a child leaving the Department's custody on how to obtain the child's case record. This enables committed caregivers to support young adults in requesting and receiving their records when transitioning from foster care.

Existing public records law (s. 119.07, F.S.) states that all record requests from authorized parties must be responded to promptly and in good faith. The only delay permitted is the reasonable time allowed to retrieve the record, to review the record and redact those portions that are exempt, and copy the record.

## Agency Contact Information

Should you have any questions regarding these guidelines, please contact:

Office of Family Safety Legislative Coordinator  
1317 Winewood Boulevard  
Tallahassee, Florida 32399  
(850) 488-8762