

2-C-3 | CHILD AND VULNERABLE ADULT ABUSE AND PROTECTION RECORDS**a. Department of Children and Families Abuse Records****(1) Confidentiality of Abuse Records**

Generally, reports of abused children or vulnerable adults which are received by the Department of Children and Families (DCF) are confidential and exempt from disclosure, except as expressly provided by statute. See ss. 39.202(1) and 415.107(1), F.S.

Thus, a union representative may not attend that portion of an investigatory interview between the DCF inspector general and an employee requiring the discussion of information taken from a child abuse investigation that is confidential under s. 39.202, F.S. AGO 99-42. And see s. 383.412(2)(b), F.S., providing that any information held by the State Child Abuse Death Review Committee or a local committee which reveals the identity of a deceased child whose death has been reported to the central abuse hotline but determined not to be the result of abuse or neglect, or which reveals the identity of the surviving siblings, family members, or others living in the home of such deceased child is confidential and exempt from disclosure requirements. In addition, the identity of the surviving siblings of a deceased child whose death occurred as the result of a verified report of abuse or neglect is confidential. Section 383.412(2)(a), F.S.

All records and reports of the Child Protection Team of the Department of Health are confidential and exempt, and shall not be disclosed, except, upon request, to the state attorney, law enforcement, DCF, and necessary professionals in furtherance of the treatment or additional evaluative needs of the child, by court order, or to health plan payors, limited to that information used for insurance reimbursement purposes. Section 39.202(6), F.S.

(2) Release of Abuse Records

Section 39.202(1), F.S., authorizes any person or organization, including DCF, to petition the court to make public DCF records relating to its investigation into alleged abuse, neglect, exploitation or abandonment



of a child. The court shall determine if good cause exists for public access to the records and is required to balance the best interest of the child and the interests of the child's siblings, together with the privacy rights of other persons identified in the reports against the public interest. Id.

This "balancing process" thus "requires the trial court to weigh the harm to the child against the benefit to the public that would potentially result from the disclosure of the records at issue." In re Records of the Department of Children and Family Services, 873 So. 2d 506, 513 (Fla. 2d DCA 2004). To perform this function, the trial court must conduct an in camera review because "[i]t is impossible to judge the potential impact of the disclosure of information contained in records without knowing what that information is." Id. at 514. But see Department of Health and Rehabilitative Services v. Gainesville Sun Publishing Company, 582 So. 2d 725 (Fla. 1st DCA 1991), holding that the trial court was not required to hold a hearing before finding good cause to release the department's records relating to a child abuse investigation, where shortly after the department's investigation, the individual who had been investigated killed the victim, the victim's family, and himself.

In cases involving serious bodily injury to a child, DCF may petition the court for immediate public release of records pertaining to the protective investigation. Section 39.2021(2), F.S. The court has 24 hours to determine if good cause exists for public release of the records. If no action is taken by the court in that time, DCF may, subject to specified exceptions, release summary information including a confirmation that an investigation has been conducted concerning the victim, the dates and a brief description of procedural activities undertaken in the investigation, and information concerning judicial proceedings. Id.

Similar procedures are established in Ch. 415, F.S., for access to DCF records relating to investigations of alleged abuse, neglect, or exploitation of a vulnerable adult. See s. 415.1071, F.S.



The petitioner seeking public access to the records must formally serve DCF with the petition. *Florida Department of Children and Families v. Sun-Sentinel*, 865 So. 2d 1278 (Fla. 2004). A “very narrow” exception to the home venue privilege applies when a petition is filed seeking to make DCF records public. See *Sun-Sentinel*, *supra*, at 1289, adopting the exception in cases “where a party petitions the court for an order to gain access to public records, and where the records sought are by law confidential and cannot be made public without a determination by the court, pursuant to the petition, that good cause exists for public access.”

Section 39.202(2)(o), F.S., provides that access to child abuse records shall be granted to any person in the event of the child’s death due to abuse, abandonment, or neglect. However, any information identifying the person reporting abuse, abandonment, or neglect, or any information that is otherwise made confidential or exempt by law shall not be released. *Id.* Section 415.107(3) (1), F.S., provides for similar release of records in the event of the death of a vulnerable adult. And see s. 39.202(4), F.S., authorizing DCF and the investigating law enforcement agency to release certain identifying information to the public in order to help locate or protect a missing child under investigation or supervision of the department or its contracted service providers. Cf. s. 39.202(7), F.S. (duties of custodians of records made confidential under s. 39.202 to provide access as requested by legislative committee acting under s. 11.43, F.S.).

In addition, “it is the intent of the Legislature to provide prompt disclosure of the basic facts of all deaths of children from birth through 18 years of age which occur in this state and which are reported to the [DCF] central abuse hotline.” Section 39.2022(1), F.S. Disclosure shall be posted on the DCF public website. *Id.* Section 39.2022(2), F.S., lists the information about the child which must be posted.

b. Foster Home, Licensure and Quality Assurance Records

Records relating to licensure of foster homes, or assessing how the Department of Children and Families is carrying out its duties, including references to incidents of abuse,



abandonment, or neglect, contained in such records, do not fall within the parameters of s. 39.202, F.S. AGO 01-54. Such reports are in the nature of quality assurance reports that do not substitute for the protective investigation of child abuse, abandonment, or neglect; to the extent that such incident reports reference an occurrence of abuse, abandonment, or neglect, identifying information that reveals the identity of the victim contained in the reference should be redacted. *Id.* Cf. s. 409.175(16), F.S., providing an exemption for certain personal information about licensed foster parents, foster parent applicants, and their families. And see *Boyles v. Mid-Florida Television Corp.*, 431 So. 2d 627, 637 (Fla. 5th DCA 1983), approved, 467 So. 2d 282 (Fla. 1985) (summary report compiled during a licensing investigation of a residential facility for developmentally disabled persons, subject to disclosure pursuant to statute [now found at s. 393.067(9), F.S.] providing for public access to inspection reports of such facilities).

c. Guardians ad litem and Court Monitors

Section 39.0132(4)(a)2., F.S., establishes confidentiality for specified information held by a guardian ad litem. And see s. 744.2104(2), F.S. (confidentiality of records held by the Office of Public and Professional Guardians relating to the medical, financial, or mental health of vulnerable adults, persons with a developmental disability, or persons with a mental illness); s. 744.1076(1)(b), F.S. (except as provided in the exemption, reports of court monitors or emergency court monitors which relate to the medical condition, financial affairs, or mental health of the ward are confidential); s. 744.2103 (2), F.S. (no disclosure of the personal or medical records of a ward of a public guardian shall be made, except as authorized by law); and s. 744.3701, F.S. (court records relating to settlement of a ward or minor's claim).

d. Status of Abuse Records Held by Law Enforcement Agencies

For information regarding the status of abuse records held by law enforcement agencies in the course of a criminal investigation, please refer to the discussion in s. C. 15 relating to law enforcement records.

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