

TITLE 10. HUMAN SERVICES
CHAPTER 133G. CLIENT INFORMATION

N.J.A.C. 10:133G (2014)

SUBCHAPTER 1. GENERAL PROVISIONS

N.J.A.C. 10:133G-1.1 (2014)

§ 10:133G-1.1 Purpose

The purpose of this chapter is to protect the confidentiality of client information received, developed, or maintained by the Division and state the conditions under which confidential client information may be disclosed, as well as the manner in which such information shall be disclosed.

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N.J.A.C. 10:133G-1.2 (2014)

§ 10:133G-1.2 Scope

(a) The provisions of this chapter shall apply to the following persons:

1. Each employee;
2. Each client applying for, receiving, or who has received child protection, child welfare, or permanency services;
3. Each person who discloses information to the Division;

4. Each person to whom the Division representative discloses confidential client information;

5. Each employee of the Division or the Department of Children and Families who has knowledge about or may disclose information regarding a child fatality or near fatality under investigation or investigated by the Division;

6. Each representative of the media and each member of the public who seeks information about a child fatality or near fatality investigated by the Division; and

7. Each Federal, State, or local government entity that requests information from the Division.

(b) The provisions of this chapter shall apply to instances of institutional abuse or neglect, unless otherwise specified by law.

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N.J.A.C. 10:133G-1.3 (2014)

§ 10:133G-1.3 Definitions

The definitions in N.J.A.C. 10:129-1.3, Definitions, and 10:133-1.3, Definitions, are hereby incorporated into this chapter by reference.

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SUBCHAPTER 2. DISCLOSURE OF CLIENT INFORMATION TO A CLIENT

N.J.A.C. 10:133G-2.1 (2014)

§ 10:133G-2.1 Protective service information

(a) A Division representative shall disclose only such protective service information to the parent or legal guardian as is authorized pursuant to N.J.S.A. 9:6-8.10a.b.

(b) A Division representative shall not disclose, confirm, or deny the identity of a reporter, unless:

1. The reporter gives prior written consent; and
2. The disclosure is not likely to endanger the life or safety of the reporter or other person or result in the discharge of or discrimination against the reporter with respect to his or her employment; or
3. Disclosure is permitted by statute or court rule.

(c) A Division representative shall not release the name or any other information identifying the person or entity who reported a child fatality or near fatality to the Division to the public or the media pursuant to N.J.S.A. 9:6-8.10a, whether or not the reporter gives prior written consent.

(d) Each Division representative shall base his or her determination as to whether the disclosure of the identity of a reporter would be likely to endanger the life or safety of the reporter or other person, or jeopardize the reporter's employment, upon the Division representative's and his or her supervisor's

evaluation of the nature and seriousness of the case and an assessment of the propensity for violence and harm or discharge or discrimination.

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N.J.A.C. 10:133G-2.2 (2014)

§ 10:133G-2.2 Child welfare information

(a) Each child welfare client is entitled to know what information is being collected, how it is used, and who has access to the information, except as limited in N.J.A.C. 10:133G-2.2(b) and (d), 2.3, and 2.5.

(b) No current or former client shall have unrestricted review of the Division records or general access to the information contained therein, except as otherwise provided by statute or court rule.

(c) A client currently or formerly receiving services may inspect or copy his or her own records as they relate to financial eligibility for or receipt of benefits, assistance, or services.

(d) A Division representative shall disclose to a current or former client other child welfare information from the client's records to the extent that the client makes a reasonable demonstration of the need to know. In general, each Division representative shall consider the client's statement of the need for the information as a reasonable demonstration, unless the Division representative has a compelling reason not to disclose the requested information, such as when the Division representative determines that disclosure of such information would be likely to endanger any person's life or safety. The determination shall be based on the Division representative's and his or her supervisor's professional judgment or that of another professional who has evaluated the nature and seriousness of the case and an assessment of the client's propensity for violence and harm as based on the client's known past behavior and threats against himself, herself, or others. If the Division representative denies the disclosure of the child welfare information to the client, the Division representative shall:

1. Give the client a verbal explanation of the reason for denial; and

2. Outline the reasons for denial in writing and make this a part of the client's record.

(e) Whenever there is reason to believe that a request for examination or copying of records is made in connection with a claim for compensation or damages against the State of New Jersey or State employees, the Attorney General shall be notified prior to honoring the request. The Office of Legal Affairs shall make the notification for the Division.

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N.J.A.C. 10:133G-2.3 (2014)

§ 10:133G-2.3 Third party information

(a) The Division representative shall not disclose any of the following to a current or former client:

1. Any third-party report, unless the Division representative receives prior written consent from the third party and release is not prohibited by law or regulation. The following statutory provisions restrict disclosure:

i. Juvenile-Family Crisis information in N.J.S.A. 2A:4A-60;

ii. Human Immunodeficiency Virus (HIV) information in N.J.S.A. 26:5C-5 et seq.;

iii. Drug and alcohol treatment records in 42 CFR 2.1 et seq.;

and

iv. Domestic violence information in N.J.S.A. 30:14-1 et seq. and N.J.A.C. 10:130-2.8;

2. Any record containing information identifying a third-party source of information, for example, reporter, other family member, collateral contact, unless the Division representative receives prior written consent from the third party and disclosure is not prohibited by law or regulation;

3. Information about another person, except with the express written consent of the other person and when not prohibited by law or regulation; or

4. Information which would, if disclosed to the client, be likely to endanger any person's life or safety as based on the client's known past

behavior and threats against himself, herself, or others. The Division representative shall base the determination on the Division representative's and his or her supervisor's evaluation of the nature and seriousness of the case and an assessment of the client's propensity for violence and harm to the child and others.

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N.J.A.C. 10:133G-2.4 (2014)

§ 10:133G-2.4 Minor client

(a) A current or former minor client may receive information contained in the Division's case record, which has not been previously disclosed, through a request made by the minor client's parent, except when the circumstances in (c) below apply.

(b) When providing information to a minor client, the Division representative shall present that information in a manner determined by the Division representative to be consistent with and appropriate to the minor client's age or condition, to enable the minor client to understand the basis for the Division's involvement, the minor client's ability to cope with the information, and, for a current minor client, the minor client's ability to participate in the development, discussion, or implementation of the case plan pursuant to N.J.S.A. 9:6-8.10a.c. Information which may be disclosed on behalf of a minor client is limited in the same manner as described in N.J.A.C. 10:133G-2.1 through 2.3.

(c) A Division representative may make an exception to the parental request requirement when:

1. The information sought is not restricted by law, regulation, or policy; and
2. The requirement of parental involvement would interfere with the child's right to privacy (for example, a female child who has had a pregnancy or abortion of which her parent has no knowledge) or interfere with other rights the child may have as a result of circumstances making him or her an emancipated minor.

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N.J.A.C. 10:133G-2.5 (2014)

§ 10:133G-2.5 Adult adoptee

All court records and information relating to adoption proceedings are sealed upon the legal finalization of the adoption pursuant to N.J.S.A. 9:3-52. Since the Division's records contain sealed court records, each Division employee shall treat these records as confidential. The Division representative shall disclose to an adult adoptee non-identifying information available in the Division's records in accordance with N.J.A.C. 10:121A-5.9(b)2. The Division representative shall disclose identifying information to an adult adoptee about any birth family member or other person who has given his or her written consent to the Division.

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SUBCHAPTER 3. RELEASE OF CLIENT INFORMATION TO PERSONS

OTHER THAN THE CLIENT

N.J.A.C. 10:133G-3.1 (2014)

§ 10:133G-3.1 Protective service information

(a) A Division employee shall disclose protective service information, with or without a client's consent, only in those circumstances pursuant to statute, including N.J.S.A. 9:3-54.2 and 9:6-8.10a, when a Division employee determines that the person or agency has made a reasonable demonstration of the need to know the information, such as for conducting meetings to engage families, and in consideration of the risk of harm to the child and others. No person shall have unrestricted review of the records or general access to the information contained therein except as otherwise provided by statute or court

rule, or unless ordered by a court or the Office of Administrative Law in accordance with N.J.S.A. 9:6-8.10a.b(6).

(b) A Department representative shall notify the police or local law enforcement authority of each substantiated incident of abuse or neglect involving a child who resides within their jurisdiction in accordance with N.J.A.C. 10:129-7.8(e) and (f).

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N.J.A.C. 10:133G-3.2 (2014)

§ 10:133G-3.2 Child welfare information

A Division employee shall disclose child welfare information only with the client's prior consent, except in an emergency, in which case a Division representative shall advise the client of the request and disclosure at a later time. With the client's consent or in an emergency, a Division employee shall

disclose information about that client, subject to the limitations and provisions set forth in 45 CFR 205.50, 45 CFR 1355.21, 45 CFR 1355.30 and N.J.S.A. 30:4-24.3, and only to a person or agency representative who is subject to standards of confidentiality comparable to those of the Division and only to a party who presents a reasonable demonstration of the need to know the information requested, for example, information needed to provide medical, psychological or social services to the child or family, except when restricted by law or N.J.A.C. 10:133G-2.3(a)1. No person shall have unrestricted review of the case records or general access to the information contained therein, except as otherwise provided by statute or court rule.

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N.J.A.C. 10:133G-3.3 (2014)

§ 10:133G-3.3 Third party information

(a) A Division employee shall not disclose the following forms of third party information to a requester, except as provided by law:

1. Third-party reports, unless the Division receives prior written consent from the third party and disclosure is not prohibited by law or regulation, such as those cited in N.J.A.C. 10:133G-2.3(a)1i, ii, iii, and iv;

2. Information identifying a third-party source of information, for example, the reporter or other family member, unless the Division receives prior written consent from the third party and disclosure is not prohibited by law or regulation; or

3. Information which would, if disclosed to the client, be likely to endanger any person's life or safety as based on the client's known past behavior and threats against himself, herself or others. A Division representative shall base this determination on the Division representative's and his or her supervisor's evaluation of the nature and seriousness of the case and an assessment of the propensity for violence and harm.

(b) When the Division representative requests a third party report to process a residential placement or other service, or apply for government benefits, the

Division representative shall inform and obtain the consent of the third party at the time of request that the information may be disclosed to others to obtain a needed service or government benefit.

(c) A Division employee shall disclose third party reports to an agency or person who is subject to standards of confidentiality comparable to those of the Division, such as a physician, psychotherapist, health or mental health agency, when:

1. The Division has guardianship or custody of the child;
2. Disclosure of the information is necessary for the child's or parent's care, treatment or supervision;
3. Disclosure is not prohibited by law or regulation, such as those cited in N.J.A.C. 10:133G-2.3(a)1i, ii, iii, and iv;
4. The Division employee has considered the risk of harm to the child and others; and
5. The third party has given his or her consent, in accordance with (b) above.

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N.J.A.C. 10:133G-3.4 (2014)

§ 10:133G-3.4 Requests for information

(a) Each person making an inquiry or request for client information shall put the request in writing, except as allowed in (d), below.

1. An agency shall make its request on official agency letterhead.
2. An individual person making a request shall include his or her address or telephone number which can be verified.
3. Any person requesting client information shall include a consent form signed by the client or shall indicate the reason he or she needs to know the information.

(b) A Division representative shall determine whether the person requesting the information can receive the information pursuant to statute and to the provisions of this chapter.

(c) No Division employee shall disclose client information over the telephone, including whether or not a person is or was known to the Division, except as authorized in (a) above or (d) below.

(d) When information is urgently needed, the Division representative shall disclose the information after verifying the caller's identity, determining that the caller is authorized to receive the information pursuant to N.J.S.A. 9:6-8.10a or in accordance with N.J.A.C. 10:133G-3.2, and determining that the caller has made a reasonable demonstration of the need to know the information and in consideration of the risk of harm to the child and others.

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N.J.A.C. 10:133G-3.5 (2014)

§ 10:133G-3.5 Disclosure within the Division, the Department, the Department of Law and Public Safety, Division of Law, and the court

(a) A Division employee shall disclose personal client information within the Division only to those persons who require such information in the course of their jobs and only to the extent necessary. Each Division employee shall obliterate or omit the names of clients and other persons when case record materials or reports are used for training.

(b) Staff of the Department's Office of Legal and Regulatory Affairs, the Commissioner or Chief of Staff of the Department of Children and Families or each Director of an office or Division of the Department of Children and Families shall have the authority to request and receive all information about Division clients.

1. The Division representative shall advise a representative of the Department of Children and Families' Office of Public Information of each child fatality or near fatality, which the Division has reasonable cause to believe was the result of abuse or neglect. A representative from the Department of Children and Families' Office of Public Information or the Director shall release information to the public about child fatalities or near fatalities in accordance with N.J.A.C. 10:133G-4.

(c) A Division employee shall disclose client information to a Deputy Attorney General, Department of Law and Public Safety, Division of Law, representing the Division.

(d) The Division Director or designee may, and upon written request shall, release records and reports to any division or unit in the Department authorized to care for, treat, or supervise a child who is the subject of an abuse or neglect report, or a parent or other person who is responsible for the child's welfare, or both, when the information is needed in connection with the provision of care, treatment, or supervision of a child or parent or other person pursuant to N.J.S.A. 9:6-8.10a.b(5).

(e) The Division shall allow the Division of Medical Assistance and Health Services' quality control reviewers to review its records to the extent necessary to confirm a child's Medicaid eligibility, in accordance with 45 CFR 74.24 and 1340.14(i)(5). The quality control reviewers shall not photocopy any materials from a Division case record nor have unrestricted review of records or general access to a case record.

(f) The Division shall release to the court its records about a juvenile before the Superior Court, Chancery Division, Family Part, pursuant to 42 U.S.C. §5633(a)(26).

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SUBCHAPTER 4. DISCLOSURE OF INFORMATION TO THE MEDIA AND
PUBLIC ABOUT A CHILD FATALITY OR NEAR FATALITY

N.J.A.C. 10:133G-4.1 (2014)

§ 10:133G-4.1 Authority for disclosure of information

The Division may release information to the public regarding a child fatality or near fatality when the fatality or near fatality was the result of abuse or neglect, pursuant to N.J.S.A. 9:6-8.10a.f.

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N.J.A.C. 10:133G-4.2 (2014)

§ 10:133G-4.2 Who may disclose information to the media or a member of the public about a child fatality or near fatality

(a) The Department of Children and Families' Office of Public Information shall direct and control the release of information to the media about a child fatality or near fatality investigated by the Division or determined by the Division to be the result of abuse or neglect. Information shall be disclosed by the Director or designee or a representative of the Department's Office of Public Information. No other representative of the Division or the Department shall disclose information to the media or a member of the public about a child fatality or near fatality unless specifically authorized to do so by the Director or designee or the Commissioner of the Department of Children and Families.

(b) The media may request information about a child fatality or near fatality either verbally or in writing. The media shall direct the request to the Department of Children and Families' Office of Public Information.

1. The Director of the Division of Youth and Family Services or a representative of the Department of Children and Families' Office of Public Information shall provide information verbally to a representative of the media about a child fatality or near fatality, within the parameters established by this chapter, upon confirming that the requester is a representative of the media.

(c) A member of the public shall make a request for information about a child fatality or near fatality in writing to the Office of the Director, Division of Youth and Family Services. If the requester claims to represent an agency, he or she shall make the request for information on official agency letterhead in accordance with N.J.A.C. 10:133G-3.4(a)1.

1. The Director or designee shall respond, in writing, within the parameters established by this chapter, to a written request from a member of the public for information about a child fatality or near fatality.

N.J.A.C. 10:133G-4.3 (2014)

§ 10:133G-4.3 Information that shall not be disclosed to the media or a member of the public about a child fatality or near fatality

(a) Pursuant to N.J.S.A. 9:6-8.10a.f, neither a representative of the Office of the Director nor the Department's Office of Public Information shall disclose information to the media or a member of the public about a child fatality or near fatality investigated by a child protective investigator when:

1. The information would likely endanger the life, health, safety, or physical or emotional well-being of a child or the life or safety of any other person;

2. The information may compromise the integrity of or interfere with a child protection investigation, a civil or criminal investigation or a judicial proceeding.

- i. If a criminal investigation is in progress or pending, the Director of the Division of Youth and Family Services or designee shall contact the county prosecutor before releasing any

information to the media or a member of the public about the incident, to determine what information can be disclosed, if any, based on the status of the criminal investigation;

3. The information is deemed confidential by Federal law or State law other than N.J.S.A. 9:6-8.10a, including, but not limited to, the laws referenced in N.J.A.C. 10:133G-2.3(a)1;

4. The information includes the name of or any identifying information about the reporter, even when the reporter gives written consent to disclose his or her identity in accordance with N.J.A.C. 10:133G-2.1(c);

5. The information includes the name of any Division representative assigned to the child protection investigation or the management of the case; or

6. The information concerns any disciplinary actions taken against a Division representative as a result of or related to the incident or the handling of the case by the Division representative.

(b) Any person denied information as stated in (a) above may petition the Chancery Court for release of the information.

(c) Neither the Director, the Department's Office of Public Information nor a designee shall release information obtained from another agency or entity which is investigating a child fatality or near fatality on its own or in cooperation with the Division, such as the police, the county prosecutor or the medial examiner.

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N.J.A.C. 10:133G-4.4 (2014)

§ 10:133G-4.4 Information that shall be disclosed to the media or a member of the public during the child protection investigation

(a) Unless prohibited by N.J.S.A. 9:6-8.10a or N.J.A.C. 10:133G-4.3, and upon the request of the media or a member of the public in accordance with N.J.A.C. 10:133G-4.2(b) and (c), information about a child fatality or near fatality that shall be disclosed to the media or a member of the public during

the child protection investigation, prior to the child protective investigator's determination of the finding, shall include and shall be limited to the following:

1. The name, age and gender of the child victim;
2. The date of the incident and the date of the call regarding the incident to the Division;
3. The living arrangement of the child victim at the time of the incident, and, for a near fatality, the child victim's current living arrangement, if different. The Director or the Department's Office of Public Information or designee shall:
 - i. Disclose the type of setting, such as the child's own home, a resource home, or an institution;
 - ii. Provide the name of the institution, if the incident occurred in an institution; and
 - iii. Not provide information containing the out-of-home placement provider's or other caregiver's name, address and other identifying information or whereabouts if the incident did not occur in an institution;
4. Information about other possible child victims. The Director or the Department's Office of Public Information or designee shall disclose:

i. The names of other possible child victims only when they are also fatalities or near fatalities which the child protective investigator has reasonable cause to believe resulted from abuse or neglect;

ii. The relationship of each child to the child victim; and

iii. The type of living arrangement of each child under the conditions specified in (a)3i, ii and iii above;

5. The nature of the incident. The Director or designee or a representative of the Department's Office of Public Information shall disclose:

i. The nature of the alleged abuse or neglect, including, but not limited to, physical abuse, neglect, or sexual abuse;

ii. The nature of the child victim's injuries, medical condition, and prognosis; and

iii. The name and identifying information about the alleged perpetrator and other specific information about the circumstances of the incident only after the child protective investigator concludes the child protection investigation, substantiates abuse or neglect, and confirms a perpetrator;

6. The status of the Division's involvement with the child victim and his or her family prior to the child fatality or near fatality, including:

i. Whether the case was in active status at the time of the child fatality or near fatality, in closed status or never known to the Division;

ii. The Division office or offices responsible for each prior case opening;

iii. The date and disposition of each prior call;

iv. The date of each prior case opening and closing;

v. The types of services provided by or through the Division, including any referral to a service not provided by the Division, without disclosing the name of any service provider; and

vi. The date and approximate time of the Division representative's last contact with the child victim prior to the incident, and whether the contact was in person or by telephone;

7. Division action taken to protect the child victim and other possible child victims within the family or the household; and

8. The name of the Division office supervising the case or conducting the child protection investigation.

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N.J.A.C. 10:133G-4.5 (2014)

§ 10:133G-4.5 Information that shall be disclosed about a child fatality or near fatality not caused by abuse or neglect

(a) The Director, the Department's Office of Public Information or a designee shall disclose only the following information to the media or a member of the public, in addition to the information previously disclosed during the child protection investigation in accordance with N.J.A.C. 10:133G-4.4, if the child protective investigator determines that the child fatality or near fatality was not the result of a substantiated incident of abuse or neglect:

1. The Division's finding of unfounded; and
2. The date of the Division's finding.

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N.J.A.C. 10:133G-4.6 (2014)

§ 10:133G-4.6 Information that shall be disclosed about a child fatality or near fatality that was the result of abuse or neglect

(a) If a child protection investigation determines that the child fatality or near fatality was the result of a substantiated incident of abuse or neglect, unless prohibited by N.J.S.A. 9:6-8.10a or N.J.A.C. 10:133G-4.3 or withheld at the request of the county prosecutor, the Director or designee or a representative of the Department's Office of Public Information shall disclose the following information to the media or a member of the public, as relevant to the given incident or the child's condition, in addition to the information

disclosed during the child protection investigation in accordance with
N.J.A.C. 10:133G-4.4:

1. The child's current medical condition or the date and cause of the child's death;
2. The child's current living arrangement, with this information provided under the same limitation as imposed by N.J.A.C. 10:133G-4.4(a)3i, ii, and iii;
3. Details about the child protection investigation of the incident, including, but not limited to:
 - i. The type of abuse or neglect that was substantiated;
 - ii. Where the incident occurred; and
 - iii. The name of the perpetrator and his or her relationship to the child victim;
4. Whether the child protection investigation determined that another child was abused or neglected at the time of the incident. The name of that child shall not be disclosed unless that child was a child fatality or near fatality as well; and

5. The types of services provided by or through the Division, both prior and subsequent to the child fatality or near fatality, including service referrals given on behalf of the child victim as well as the services or referrals given on behalf of the child victim's surviving family members, except as otherwise prohibited by law. No employee shall disclose the name of a service provider.

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N.J.A.C. 10:133G-4.7 (2014)

§ 10:133G-4.7 Ability to seek court relief if denied information about a child fatality or near fatality

If the Director or designee or a representative of the Department of Children and Families' Office of Public Information denies the media or a member of the public access to information about a child fatality or near fatality under these

rules, he or she may seek disclosure of the information through the Chancery Division of the Superior Court, pursuant to N.J.S.A. 9:6-8.10a.f.

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SUBCHAPTER 5. RELEASE OF INFORMATION TO GOVERNMENT ENTITIES

N.J.A.C. 10:133G-5.1 (2014)

§ 10:133G-5.1 Request procedure

(a) A Federal, State, or local government entity requesting information regarding an abuse or neglect report, when the information is being requested for a matter other than the investigation of a report of abuse or neglect, shall submit a written request to: Division of Youth and Family Services, PO Box 717, Trenton, NJ 08625-0717.

(b) The request shall include:

1. A citation identifying the requester's statutory mandate to protect children from abuse and neglect;
2. The specific information that is being requested;
3. The purpose for which the information will be used; and
4. A statement indicating that the requesting government entity will keep the information confidential.

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N.J.A.C. 10:133G-5.2 (2014)

§ 10:133G-5.2 Determining whether to disclose information

(a) When determining whether to disclose information, a Division representative shall determine whether the requester has statutory authority to

receive confidential abuse or neglect information and a need to know the information being requested.

1. If the request is approved, the Director or designee shall provide a summary of the information that is approved for release.

2. If the request is disapproved, the Director or designee shall notify the requester, in writing, of the disapproval and the opportunity for the requester to appeal this decision through the Chancery Division of the Superior Court pursuant to N.J.S.A. 9:6-8.10a.

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N.J.A.C. 10:133G-5.3 (2014)

§ 10:133G-5.3 Safeguards

(a) The following safeguards are applicable when information is requested by a government entity. The Director or designee shall disclose only that information:

1. Deemed appropriate, as determined pursuant to N.J.A.C. 10:133G-5.2, for the requesting entity to carry out its responsibility under law to protect children from abuse or neglect;
2. Related to an abuse or neglect report which would not be likely to endanger the life, safety, or physical or emotional well-being of a child or the life or safety of any other person;
3. Related to an abuse or neglect report which would not be likely to compromise the integrity of a child protection investigation or a civil or criminal investigation or judicial proceeding;
4. Related to an abuse or neglect report, which is not deemed confidential by Federal or State law other than N.J.S.A. 9:6-8.10a;
5. Which does not contain the name of the reporter or any other information which could readily identify the reporter, unless the reporter gives prior written consent in accordance with N.J.A.C. 10:133G-2.1(c); and

6. Which does not contain the name of or any information which could readily identify the Division representative or representatives assigned to the child protection investigation or the management of an open case.

(b) A government entity receiving information pursuant to N.J.S.A.

9:6-8.10a shall keep the information confidential and shall not redisclose the information. A violation of this confidentiality requirement shall be subject to criminal sanctions pursuant to N.J.S.A. 9:6-8.10b.

-End-