

At a Glance

Responding to Information Requests from DCFS



Who: You.

Advocates' communications with survivors are privileged. That means you may not reveal any information about a survivor without her written permission – with some narrow exceptions.



What: Requests for information about survivors and their children

DCFS workers have challenging jobs which require them to gather information quickly. Child Protective Services investigators and/or Child Welfare Services social workers from the Division of Child and Family Services (DCFS) may ask you for information about survivors and their children.



When: All the time

Child welfare workers ask advocates for information about specific survivors during a phone call, at a Child Protection Team (CPT), or in coordinated community response meetings.



Why: Confidentiality is critical to good advocacy with survivors

Recognizing this, Federal and State law require advocates to keep information confidential except in the case of reporting child abuse and supplying DCFS the *child's relevant* records in *some* situations. Any other time, advocates need the survivor's written permission to share information.



How: DCFS MAY request the "relevant records" related to a child during the course of an investigation for child abuse or neglect.

RCW 26.44.030(11) provides: "Upon receiving a report of alleged child abuse and neglect, the department or investigating law enforcement agency shall have access to all relevant records of the child in the possession of mandated reporters and their employees."

The law implies some specific limits on what DCFS can compel from dv advocates and when. Even when complying with this statute, we still have to function within our advocacy role. Keep reading for details on how to do this!



What does the law really mean? Let's break it down.

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DCFS may access records during the *investigation* of reports of alleged child abuse or neglect. The intention is for social workers to have access to the information they need to quickly determine whether or not a child is in danger. After the investigation, a social worker must go through the courts (like anyone else) to obtain access to confidential records.

"Relevant" is not defined, nor does the RCW indicate who decides if a record is relevant or not. The RCW leaves the door open for your agency to use discretion in turning over information. Would the information in the record help someone figure out if the child is facing immediate risk of injury or neglect?

DCFS does not have the right to the records of the adult dv survivor.

The law applies only to written records. DCFS does not have access to knowledge gained through conversation or observation.

Advocates are mandated reporters, so this law applies to DV agencies.

Overview of Best Practices regarding records requests from DCFS

1. Start with minimal record keeping: minimal records = minimal risk to survivors

Your program should keep minimal records, keep separate files for children and survivors, and record only what is necessary for funders (ie, services provided and dates). This minimizes the risk of increasing danger to a survivor and her children should records be subpoenaed or requested by CPS. Please see WSCADV's protocols and tip sheets on record keeping for more information.

If your program keeps extensive written notes in children's files, you may want to evaluate why. Who is this serving? Is it for staff? Does it benefit children or survivors to do so? How does it pose risks to survivors and their children?

2. Proactively inform your community partners about your confidentiality requirements and your record keeping practices.

Meet with your local CPS office and show these community collaborators your record keeping forms and describe the kind of information you keep. This will help social workers determine whether it is worthwhile making records requests.

Set an excellent example in your community for professionalism and integrity around confidentiality and privileged communications.

3. Develop a process for verifying that an individual requesting records is genuinely an employee of DCFS if you do not already know them.

For example, do not confirm that your agency has served or is serving a particular family in the initial call. Instead, take note of the social worker's name, the information they are requesting, the office they are calling from, and its phone number. Let the individual know that you will get back to them to let them know if you have any information you are able to share with them. Call back to confirm their identity, checking with a DCFS supervisor if necessary.

4. Confirm that the social worker is a Child Protection Services Investigator who is conducting an investigation on a case.

Once the initial investigation is complete, DCFS social workers do not have a right to request records without a court order. If the case has progressed to voluntary services, dependency court or a determination has been made about the risk to the child, that means the investigation is over. After the investigation, if a social worker wishes to have access to records, they will need to follow formal processes associated with requesting otherwise privileged records, i.e. subpoena. You can find out what state the case is in by asking "Are you investigating an allegation of child abuse or are you following up on a service plan?"

5. When DCFS has requested information and they are NOT in the investigation phase of a case, release information to DCFS only with the survivor's written permission, and only after providing her advocacy regarding the potential benefits and costs of doing so

Let the survivor know what DCFS is asking for, and help her weigh the pros and cons of allowing release of that information. Strategize with her about what she would or would not like you to share with her social worker. Keep in mind that it usually does not serve survivors well for you or her to be in an antagonistic relationship with the social worker.

6. If you *must* release records without the survivor's permission in response to a request from DCFS, make sure they are just the child's records, that they are "relevant", and that they are marked "Confidential"

DCFS should not be provided with the adult survivor's records at all.

In identifying which of the child's records might be relevant, ask yourself: What in the record would help a person determine the risk of child abuse or neglect? Keep in mind the abuser may have access to any information made available to DCFS. Information in the records that does not assist with the immediate questions of children's safety or imminent risk of abuse and which may endanger the child or the survivor if released to the abuser should *not* be included (for example, safety plans, current addresses, etc.)

Mark all records given to DCFS "**CONFIDENTIAL: DO NOT RELEASE OR DISSEMINATE per RCW 70.123.076/RCW 5.60.060(8)**" (make labels or a stamp with this)

7. If the survivor is in hiding from the abuser in your shelter or elsewhere, always request the DCFS social worker ensure that her physical address does NOT get written down in their records, or entered into their FAMLINK system.

Additional Resources:

- Model Release of Information and model Notice of Participants Right to Confidentiality
<http://www.wscadv.org/resourcesPublications.cfm>
- Model protocol on Record-Keeping when Working with Battered Women,-2007 WSCADV
<http://www.wscadv.org/resourcesPublications.cfm>
- Model Protocol on Confidentiality When Working with Battered Women-2007 WSCADV
<http://www.wscadv.org/resourcesPublications.cfm>
- A Fresh Look at Confidentiality, New tools for protecting Survivor's information-2006 WSCADV
<http://www.wscadv.org/resourcesPublications.cfm>
- Confidentiality, An Advocate's Guide-2007 The Battered Women's Justice Project
http://data.ipharos.com/bwjp/documents/Confidentiality_Advocates_Guide.pdf
- Learning the laws on Confidentiality-WSCADV On-Line Course-2007
<http://www.wscadv.org/onlineTraining.cfm>

Examples of some specific situations and how to handle them:

The DCFS social worker is responding to a child abuse report, filed by someone OUTSIDE your agency, and is asking for your agency's records on a particular family:

1. Verify the identity of the social worker.
2. Confirm that the social worker is a CPS Investigator and they are investigating an allegation of child abuse (versus a Child and Family Welfare Social Worker following up on a case that has already been investigated.)
3. Let the social worker know that your agency has a process for responding to requests for information like theirs, which you will set in motion. Try to find out what it is that they are looking for: do they just want to confirm a person is in shelter? Are they looking for information on parenting or child disclosures of witnessing abuse, etc.
4. Explain in general the kind of information your records do and do not contain.
5. Let the social worker know when you will get back to her with a response to her request for information. (Be aware that they are functioning on tight timelines, so sooner is better from their perspective. Don't overpromise but try to get back to them within the day or by first thing next day.)
6. If your agency is currently serving the survivor and/or child, make every effort to safely contact the survivor and inform her of the CPS investigation. Use advocacy based counseling techniques to assist her in decision making and safety planning. In particular, help her identify the potential costs and benefits of contacting the CPS social worker directly, or avoiding contact with DCFS. Help her anticipate what is likely to happen with a CPS investigation and intervention.
7. Find out if the survivor would like to speak to DCFS social worker directly on her own or with your support, or if she would like to give you a release of information to speak to CPS about anything specific. (For example, your knowledge of survivor's protective strategies and parenting strengths.)
8. Keep in mind that CPS has the right to ask for the child's written records only and that without a release you do not have permission to disclose information obtained in conversations, support groups, or through observation.
9. Determine whether or not your agency is obligated to release any information without the survivor's written permission, per RCW 26.44.030(11) (Is DCFS in an investigation phase of the case? Has your agency served the family? Do you have records on the child? What information is "relevant"?)
10. Call back the social worker and inform them whether or not you have information to share with them at this time. Explain any limits on your ability to provide information to the CPS worker in terms of state and federal law regarding privilege and confidentiality obligations.
11. If the CPS investigator insists on copies of a child's written records, review them for relevancy to the investigation. In other words, what in the record will be of assistance to the investigator in determining risk of child abuse or neglect? Keep in mind the abuser may have access to any information made available to CPS. Information in the records that do not assist with the immediate question of

children's safety or imminent risk of abuse and which may endanger the child or the survivor if released to the abuser should *not* be included (for example, safety plans, current addresses, etc.) It may be helpful to get consultation on this question from a supervisor, the Executive Director or your coworkers. Some agencies designate one person to respond to all information requests from DCFS. Be clear on your agency's policy.

Keep in mind that minimal recording of information is the best way to ensure that information that could damage or endanger the survivor and her children does not reach the abuser. (see WSCADV's quick sheet on record keeping [insert link](#))

DCFS has required the survivor to seek services at your program, and the social worker is asking for a written or verbal report of the survivor's "progress" or other information about her participation:

1. A survivor may agree to or be required to seek your program's services by DCFS. This is an agreement between the survivor and the DCFS worker, not between your program and DCFS. Your program's services should be voluntary. This means that if a survivor asks you to confirm her attendance at group or other services by signing a form with your date and initials you should accommodate her wishes. However, it is not your job as an advocate to require the survivor to attend, monitor her attendance independently, or provide reports to the DCFS worker without her written permission and release.
2. If a DCFS worker calls to request information on a particular client, verify the social worker's identity.
3. If your agency does not have a written release of information to speak about that survivor, tell the worker you do not have any information you can release to them at the moment, and that you will get back to them.
4. Contact the survivor and inform them of the social worker's request for information. Remind the survivor of your commitment to keep information about her confidential unless you have her written permission.
5. Find out if the survivor would like to speak directly to the social worker with your support. If so, arrange a conference call and sit with the survivor as she calls, or arrange a meeting with the social worker to be attended by both you and the survivor. Help the survivor anticipate what she would like to say and not say to the social worker. Use Advocacy Based Counseling skills to help the survivor think through what, if any, information she would like you to share with the social worker. It can also be helpful to find out if there is information the survivor does NOT want to share herself or have you to share.
6. If the survivor does not wish you to share any information with the social worker, call back the worker and inform them that you have no information you are able to share about the survivor at this time. "I am sorry, I just do not have any information I can share with you about that person at this time." Cite state and federal confidentiality requirements if necessary.

You are at a CPT meeting focused on the survivor and her children and the group would like your impressions of the survivor.

1. Before the CPT meeting, make every effort to find out what cases will be discussed so that you will know if they include current or former program participants.
2. If it is safe, make every effort to contact the survivor ahead of time to offer advocacy around the CPT meeting, including the potential costs/benefits of giving you permission to reveal information about the survivor and her children.
3. If the survivor wants you to share any information, get a written release of information from her. The release should be specific and time limited.
4. If you find out at the meeting that the CPT involves a family you have served, take your cues from the survivor, if she is there. If she reveals that your program has served her, you may acknowledge this. If possible, ask for a break and connect with the survivor to provide her advocacy regarding how you can be helpful to her in the meeting, and what she does and does not want to say about the services she received at your program. If the survivor does not acknowledge that she received services from your program (or is not present), do not reveal your program's contact with her.
5. If the survivor does wish for you to reveal certain information, have her sign a release regarding that particular information.
6. When discussing information about a specific survivor, make clear that you have a release to discuss it.
7. If the survivor does NOT wish you to reveal any information about her, or her children, then politely inform your CPT team "I am sorry, I do not have any information I can share about this person." Cite state and federal law. You can still educate the group about domestic violence GENERALLY, including tactics commonly used by abusers, barriers survivors commonly face to safety, what your local law enforcement response looks like, and so on. You can still help the group see where their gaps in information may be leading them to problematic conclusions and/or identify what additional information they need to make a good decision in a case involving DV.