

# **BUREAU OF EARLY CHILDHOOD SERVICES**

## **POLICY STATEMENT**

**ID NUMBER:** 96-8 (Updated December, 2004)

**TOPIC:** Responding to Public Inquiries

**MODALITIES IMPACTED:** DCC, FDC, GFDC, SACC

**APPLICABLE REGULATIONS:** None

**CONTACT:** Kathleen Pickel

**Phone:** (518) 473-1009

**EFFECTIVE:** Immediately

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**THIS POLICY STATEMENT IS EFFECTIVE IMMEDIATELY AND CANCELS ALL PREVIOUS MEMOS OR STATEMENTS ON THIS TOPIC.**

Often, we are asked questions about our regulatory responsibilities in inspecting, licensing, monitoring and investigating complaints in relation to child day care providers. The purpose of this policy statement is to distinguish between that information which must be maintained as confidential and that which may be disclosed.

Article 6 of the Public Officers Law, commonly called the Freedom of Information Law (FOIL), governs the release of information by the Office of Children and Family Services (Office) and all other State and local government agencies. This law applies only to written requests for information that involve the production of records or documents. FOIL requires that the Office make all records available for inspection unless the release of such records is specifically prohibited by the law.

### **INFORMATION WHICH CAN BE RELEASED**

While FOIL is not directly applicable to all requests for information, its principles can provide guidance in responding to other types of inquiries. Any information that is not prohibited from being released can and should be provided. Below is a list of the most commonly requested

information which can be released. It should be noted that this list is not all-inclusive. If you receive a request for a type of information that is not on this list and/or if you are uncertain about whether it is permissible to release the requested information, you should consult with your supervisor or the Bureau's FOIL Officer.

The following information may be released:

1. Whether a provider is licensed or registered;
2. A provider's maximum capacity and the ages of children the provider is licensed or registered to serve;
3. A program's address and telephone number, except when the Office knows that a telephone number is unlisted;
4. A provider's compliance history;
5. Citations of substantiated regulatory violations and the nature of such violations;
6. Findings of completed inspections or complaint investigations;
7. Actions the Office took with regard to substantiated regulatory violations, including the content of corrective action plans;
8. Citations of alleged regulatory violations may be shared when a caller already is familiar with an incident, condition, or complaint occurring at the program. \*
9. Day care program waivers, limitations and/or restrictions.

\*Callers that are given information about alleged violations (# 8) must be made aware that the violation is an unsubstantiated allegation and that it is under investigation. These callers must also be informed that once the Office has made a determination, if substantiated, it will be reflected on the profile page associated with the program in question. The Profile page can be assessed by searching for the program on the Office's website at: [http://ocfsws.ocfs.state.ny.us/ccfs\\_facilitysearchpage/](http://ocfsws.ocfs.state.ny.us/ccfs_facilitysearchpage/) . A caller may also call the Office for updated information on a complaint investigation.

A caller who is simply researching child care programs for placement purposes shall not be given unsubstantiated complaint information.

All callers should be made aware that the Office website contains profile pages associated with

each licensed/registered program that lists all substantiated violations against that specific program and each violation's status as corrected or uncorrected.

#### INFORMATION THAT CANNOT BE RELEASED

As stated previously, FOIL prohibits the release of certain types of information. Based on the confidentiality principles set forth in the Public Officers Law, the Office has determined that the following information cannot be released or confirmed:

1. The name and identity of the source of a complaint, except where the source is an employee of the Bureau of Early Childhood Services or a contractor performing day care registration or inspection functions on behalf of the Office.
2. The names of references and the content of provider references (except in the case of providers or applicants to be providers, who may receive such information - see Policy statement 96-3);
3. Medical information relevant to children or providers;
4. Children's names or other family identifying information;
5. The home addresses and telephone numbers of employees of child day care providers;
6. Personal information about the provider or the family composition of a family day care or a group family day care provider;
7. Any information concerning the data base check of any person with the State Central Register of Abuse and Maltreatment, including database check forms and the results of the data base check;
8. Speculation regarding the outcome of an incomplete investigation or inspection;
9. Speculation regarding actions the Office may take in the future;
10. Any information relative to the existence, nature or results of a child abuse and maltreatment investigation;
11. Social security numbers and Federal employer's identification numbers (EIN), except when such information is requested by the Department of Taxation and Finance (see Policy statement 96-5); and

12. Any information related to the employment history of applicants and providers.
13. The criminal history records for providers, household members, volunteers, substitutes and employees.

## RESPONSE TO PUBLIC INQUIRIES

We may receive any number of different requests for information. The appropriate response will vary depending on the type of request and the information requested. The following describes the appropriate response of Bureau staff and registration contractors/subcontractors for various types of requests.

### 1. Requests for records or documents

All requests for copies of records or documents must be made in writing, regardless of whether the person making the request is a provider seeking records pertaining to him/herself or another interested party. Bureau staff and registration contractors/subcontractors should instruct individuals seeking copies of records or documents to send a written request specifying the desired information to the designated Bureau FOIL Officer in Home Office. That individual will determine, in collaboration with the Office of Counsel, which records or documents may be released and will see that they are provided in accordance with the provisions of the law.

### 2. Subpoenas and court orders

The one situation where FOIL is irrelevant to the release of documents is where a court has ordered that certain documents be produced. In such instances, the documents must be produced regardless of whether they would be available under FOIL. Subpoenas and court orders should come to the Office of Counsel first. When they receive a subpoena or court order, they will advise the Bureau what records are needed. Office of Counsel will send the records with an appropriate cover letter. If a subpoena or court order is received directly by the Bureau or a registration contractor or subcontractor, the Office of Counsel should be contacted **immediately** so that the matter may be handled properly.

### 3. Other written requests for information

As noted above, FOIL applies only to written requests for information that involve the production of records or documents. When a request does not involve the production of records or documents, it is Bureau policy to respond to the request as clearly and completely as possible.

These types of requests do not need to be referred to the Bureau FOIL Officer for response. In preparing a response, only information which was previously discussed as being available under FOIL should be released. If you are unsure about whether or how to respond, consult with your supervisor or the Bureau FOIL Officer.

#### 4. Verbal (telephone or face-to-face) requests for information

It is Bureau policy to respond verbally to verbal requests for information as clearly and completely as possible while maintaining appropriate confidentiality under the standards discussed previously in this policy statement. The only time that a person should be instructed to submit a written request for information is when they want copies of records or documents. Turning a verbal request into a FOIL request when copies of records or documents are not needed creates an unnecessary delay. Frequently, the requested information is useless if it is not provided immediately - i.e. when a parent is selecting a child care provider. In addition, turning a request for verbal information into a FOIL request creates an unnecessary workload for the Bureau FOIL Officer, as well as other Bureau staff who must prepare documents in response to the request. Therefore, when hard copies are not being requested, you should respond verbally, and always trying to be as responsive and accurate as possible.

Generally, information from any record or document that could be provided under FOIL can be provided verbally. Likewise, information that would not be subject to disclosure under FOIL cannot be disclosed verbally. In preparing to answer questions, consider the nature of the question carefully. Answer questions by giving facts, not opinions or reactions. Care should be taken that confidential information is not inadvertently released by confirming or denying statements made by the questioner. If a question appears sensitive, or you are uncomfortable, tell the questioner that you will need to get back to them and consult with your supervisor or the Bureau FOIL Officer before proceeding to answer the question.

Probably the most common type of information requested verbally involves the compliance history and status of a specific child day care provider. Frequently, parents who are in the process of selecting care for their children ask whether there have been any complaints about a specific provider. In preparing to answer this question we should respond to the question as if the parent is interested in the compliance history and status of the provider in question, regardless of whether a violation came to light as the result of a complaint or an inspection.

In most cases, the information which is most relevant to a parent's decision-making process is that which reflects a program's current staffing, administration and programming. Therefore, you might say the following:

"Although more dated information may be available, it is usually most helpful to initially

look at a program's compliance history over the past two years."

However, if the caller requests information about the period prior to the last two years that information must be shared regardless of the responder's opinion of its current relevance. Callers requesting information in regard to specific unsubstantiated complaints must be told that the Office investigated the complaint and it was unsubstantiated.

At other times, it may be more appropriate for the initial response to provide information that predates the last two years. This is particularly true when a program has a history of repeated non-compliance in one or more areas. Below is a sample response that may be used to answer a question in this situation:

"The program has been cited for being over capacity three times since June, 2001. Most recently the program was found to be over capacity in the infant room on December 30, 2004."

Staff are encouraged to use their professional judgment regarding which approach best suits each individual situation. If you are unsure, tell the person you will have to get back to them and consult with your supervisor or the Bureau's FOIL Officer. Whichever approach is used, parents may ask follow-up questions. It is important that staff answer the questions being asked in a timely manner and as accurately, completely and honestly as possible. Remember that answers must be factual in nature and cannot include speculation or opinions. If parents ask for opinions about a program and/or for speculation about the results of any current complaint investigation or enforcement action, the proper response is to advise the parent that the Office cannot offer such opinions or speculation.

#### 5. Media requests

The Office has special procedures for addressing requests from the media for any information including interviews or statements. Refer all media contacts to the Office's Public Information Office (PIO) at (518) 402-3130. Immediately after making such a referral, call the Bureau's Home Office to report the media contact. If PIO wants you to respond to a media request, you will be notified either directly by PIO, the Bureau Director or the director's designated representative. Do not respond to media contacts unless you have received authorization to respond from one of the above listed individuals.

#### 6. Government requests

Occasionally, you may receive a request for information from the Governor's Office, members of

