Confidentiality Update

2024 NYPWA Winter Conference

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Questions

Intra DSS Information Sharing

Housing to CPS

Q. In the event that an LDSS housing unit becomes aware of information relevant to an incident that placed a child at risk, and there is an open SCR, can housing provide info regarding the application for placement? Specifically, the father was arrested in the presence of the mother for Endangering the Welfare of a Child as a result of domestic violence with the mother. A temporary order of protection was made by criminal court. Only a few weeks later, mother asks housing to place him in the same room as she and the children. Although we are unsure whether she knew of the order of protection, but she knew he was arrested for putting his hand around the throat of her 9 year-old. Pursuant to SSL §423(1)(b) housing can share unless the confidentiality is not "expressly protected by law". That phrase is subject to interpretation. What do you think?

A. SSL §423(1)(b) states:

> Every local department of social services shall provide to the child protective service information available to the local department which is relevant to the investigation of a report of child abuse or maltreatment or to the provision of protective services, where the confidentiality of such information is not expressly protected by law.

As a general proposition, the primary criteria for sharing client information within an LDSS would be the necessity for the inquirer to have that information to perform their work function, and whatever direct statutory/regulatory authority there might be to share. So, with regard to the specific question, it does appear that SSL §423(1)(b) not only provides justification for housing to provide the information about the living situation to CPS, but it requires it. While temporary assistance client information is confidential pursuant to SSL 136, if that information is relevant to investigating a CPS report, or to the provision of preventive services is must be provided to CPS. If nothing else, it would seem to be relevant to household composition, of not to potential danger to the child.

See also 18 NYCRR 357.3 (e) Disclosure to Federal, State or local official:

> (4) Nothing in this Part precludes a social services official from reporting to an appropriate agency or official, including law enforcement agencies or officials, known or suspected instances of physical or mental injury, sexual abuse or

> exploitation, sexual contact with a minor or negligent treatment or maltreatment of a child of which the social services official becomes aware of in the administration of public assistance and care.

CPS information sharing with foster care

Q- May CPS share information with foster care or preventive services if the services are not contracted out. In the event that the LDSS has an open foster care case and an SCR report is made regarding the family by someone other than the foster care CW, can and how much does CPS share with foster care? Are there any concerns that in the event the SCR report is unfounded that foster care will have shared info with CPS, or vice versa?

A- SSL 422(4)(A)(c) permits CPS information to be provided to a duly authorized agency having the responsibility for the care or supervision of a child who is reported to the SCR. I think that this would include both the foster care unit of an LDSS with whom the child has been placed, and the preventive services unit of the LDSS. See SSL 371(10)(b) and M. of Lascaris, 65 Misc.2d 787.

As far as disclosure goes, I would say that it comes down to the necessity of foster care or preventive in having the CPS information in order to work with the family. To the extent that CPS information is permissibly released to an authorized agency, the last sentence of 422(4)(A) says:

> To the extent that persons or agencies are given access to information pursuant to subparagraphs…(c)…of this paragraph, such persons or agencies may give and receive such information to each other in order to facilitate an investigation conducted by such persons or agencies.

The OCFS CPS Manual also give similar direction- see Chapter 7, at section 7

7. Sharing of information

The LDSS conducting the CPS investigation is permitted by law to share CPS report information with the LDSS that has legal custody of the child(ren) in foster care named in the CPS report and, if different, the LDSS or VA that has supervision over the placement [SSL §422(4)(A)(c)]. Accordingly, the investigating CPS may inform such LDSS and/or VA of the allegations.

It is consistent with applicable foster care confidentiality standards for the LDSS with legal custody of child(ren) in foster care named in the report and, if applicable, the LDSS or VA that certified or approved the foster boarding home, to share with the LDSS conducting the CPS investigation any information it has that is relevant to the investigation [SSL §425(1)].

If a CPS worker observes or suspects that a foster parent is not adhering to regulatory standards for foster care, the CPS worker should inform the certifying/approving agency for the foster boarding home about his or her concerns and observations so that the certifying/approving agency can explore those concerns and take any actions that may be necessary to protect children.

The CPS investigating a report involving a foster boarding home also is responsible for informing an LDSS with legal custody of the child(ren) in foster care if there is a removal of a child from the home. They should also share information during the investigation about concerns that could affect the safety of children in the foster boarding home.

While the CPS investigation is pending, the custodial LDSS and, if different, the LDSS or VA that certified or approved the foster home must continue to carry out their statutory, regulatory, and OCFS-established responsibilities. These include, but are not limited to:

- Maintaining appropriate casework contacts
- Case planning
- Assessing the appropriateness of the placement (including assessing the safety of the child(ren)
- Monitoring compliance by the foster parent with applicable foster home certification or approval standards

Determination of an investigation in a foster boarding home

The primary objective for any investigation of child abuse or maltreatment is protecting the safety of the child named in the report and any other children in the home. All necessary steps should be taken to achieve this result. An Article 10 Family Court petition cannot be brought against a foster parent for the abuse or neglect of a child in foster care. However, if it appears that a crime may have been committed and it is in the best interests of a child in foster care, CPS should make a referral to the appropriate district attorney.

As with all CPS reports, the CPS must determine within 60 days of the receipt of the report whether the report is indicated or unfounded [SSL §424(7)]. CPS must determine whether to indicate or unfound a report involving a foster boarding home by using the same criteria as is used for all other reports, i.e., whether there is some credible evidence to support the allegations of abuse or maltreatment in cases accepted by the SCR before January 1, 2022, or a fair preponderance of evidence to support the allegations of abuse or maltreatment in cases accepted by the SCR on or after January 1, 2022[1] [SSL §412(6) & (7)].

A foster care provider must adhere to state foster care regulations; those regulations are the standards of compliance used by foster care oversight agencies. CPS does not use these standards to determine whether there was abuse or maltreatment of children in the home. The decision of whether to indicate the report must be based on an application of the definitions of child abuse and maltreatment. (See **Chapter 6,** *Child Protective Services Investigations***.**)

This determination process for a CPS report includes:

- Determining whether some credible evidence to support the allegations of abuse or maltreatment in cases accepted by the SCR before January 1, 2022, or a fair preponderance of evidence to

[1] https://ocfs.ny.gov/main/policies/external/ocfs_2021/ADM/21-OCFS-ADM-26.pdf

support the allegations of abuse or maltreatment in cases accepted by the SCR on or after January 1, 2022[2] (See **Appendices,** Section E*, Definitions of child abuse and maltreatment.)*

If the report is indicated, developing a plan that provides for the continued safety and protection of the child(ren)

Notifying the subject(s) of the report of the determination of the report and of his/her rights (See **Chapter 12,** *Notifications***.**)

Notifying all other adult person(s) named in the report, including the parent(s) or guardian(s) of any foster child named in the report) of the determination of the report

The CPS with primary jurisdiction for investigating the report must notify the LDSS with legal custody of the child(ren) in foster care named in the CPS report, the LDSS or VA that certified or approved the foster home, and the applicable OCFS Regional Office of the determination, whether the report was indicated or unfounded [SSL §424(6)(b)].[3] The individual agencies involved in the case, based on their respective roles and responsibilities, should determine what, if any, action must be taken in regard to the placement of children in the home and the certification or approval of the foster home.

Post-determination actions

Based on the facts of the case, it may be appropriate to keep the child in foster care in the foster home. In all such cases, the decision and its basis must be sufficiently documented in CONNX.

If the decision is made to remove the child(ren) in foster care from the foster home, the standards set forth in 18 NYCRR 443.5 must be followed [SSL §400]. A child in foster care may be removed from the foster boarding home without notice if the child's health and safety are at risk [18 NYCRR 443.5(a)(1)].

Concerns about whether foster parents should maintain their certification or approval following the indication of a CPS report must be addressed by the LDSS or VA that is responsible for certifying or approving the foster boarding home. Actions that constitute abuse or maltreatment generally are also in violation of certification or approval requirements. If the decision is made to decertify or revoke approval of the foster home, the standards set forth in 18 NYCRR 443.11 apply.

With regard to an unfounded report, SSL 422(5) limits disclosure of a sealed unfounded case to the local child protective service, so it does not appear that the existence of unfounded reports, or the report information can be released to foster care or preventive. To the extent that CPS provided CPS information to foster care or preventive during the CPS investigation, if the case was unfounded, CPS would be no longer permitted to provide information as of the time of the unfounding.

Law Enforcement:

Q- We have a potential false reporting case that is being investigated by law enforcement, and they are asking for our intake notes, and other case information for their investigation. Are we permitted to turn over this information in false reporting cases without a subpoena being issued?

[2] https://ocfs.ny.gov/main/policies/external/ocfs_2021/ADM/21-OCFS-ADM-26.pdf
[3] 16-OCFS-ADM-13, "Requirements Relating to CPS Reports Involving Foster Parents"; SSL §424(6)(b)

A- Yes, you can, per SSL 422(4)(A)(l)(i), and 422(5) provided that the request meets the criteria in those sections of the law.

SSL 422:

4. (A) Reports made pursuant to this title as well as any other information obtained, reports written or photographs taken concerning such reports in the possession of the office or local departments shall be confidential and shall only be made available to:

(l) a criminal justice agency, which for the purposes of this subdivision shall mean a district attorney, an assistant district attorney or an investigator employed in the office of a district attorney; a sworn officer of the division of state police, of the regional state park police, of a county department of parks, of a city police department, or of a county, town or village police department or county sheriff's office or department; or an Indian police officer, when:

(i) such criminal justice agency requests such information stating that such information is necessary to conduct a criminal investigation or criminal prosecution of a person, that there is reasonable cause to believe that such person is the subject of a report, and that it is reasonable to believe that due to the nature of the crime under investigation or prosecution, such person is the subject of a report, and that it is reasonable to believe that due to that nature of the crime under investigation or prosecution, such records may be related to the criminal investigation or prosecution;

5. (a) Unless an investigation of a report conducted pursuant to this title that is commenced on or before December thirty-first, two thousand twenty-one determines that there is some credible evidence of the alleged abuse or maltreatment or unless an investigation of a report conducted pursuant to this title that is commenced on or after January first, two thousand twenty-two determines that there is a fair preponderance of the evidence that the alleged abuse or maltreatment occurred, all information identifying the subjects of the report and other persons named in the report shall be legally sealed forthwith by the central register and any local child protective services which investigated the report. Such unfounded reports may only be unsealed and made available:

(v) to a district attorney, an assistant district attorney, an investigator employed in the office of a district attorney, or to a sworn officer of the division of state police, of a city, county, town or village police department or of a county sheriff's office when such official verifies that the report is necessary to conduct an active investigation or prosecution of a violation of subdivision four of section 240.50 of the penal law.

(b) Persons given access to unfounded reports pursuant to subparagraph (v) of paragraph (a) of this subdivision shall not redisclose such reports except as necessary to conduct such appropriate investigation or prosecution and shall request of the court that any copies of such reports produced in any court proceeding be redacted to remove the names of the subjects and other persons named in the reports or that the court issue an order protecting the names of the subjects and other persons named in the reports from public disclosure.

The best practice is for your LDSS to have this request made in some sort of writing in which the law enforcement agency states the bases for their request (in compliance with what the statutes require for release) so that it can be documented in the case file.

Q- Can a District Attorney obtain CPS records concerning a case where some of the information in the records comes from sealed unfounded reports that CPS accessed when a new referral was received? The context of the DA's interest is to present the information to a grand jury investigating the operation of CPS.

A- My position would be that if records from a sealed case are properly accessed by CPS when investigating a subsequent report, those records retain the confidentiality that they have under SSL §422(5) may not be re-disclosed except as permitted by §SSL 422(5)

Based upon SSL§ 422(5), CPS can only access unfounded reports for the purpose of a subsequent investigation of a new referral. Law enforcement can only access unfounded reports for prosecuting a charge of falsely reporting an incident, and even in those circumstances, only re-disclose for the purpose of investigating or prosecuting the falsely reporting an incident charge.

It seems to me that this by itself would prohibit any disclosure to the DA for any purpose other than when there is a falsely reporting an incident charge. With regard to the claim that since information from an unfounded report was properly disclosed to CPS under SSL 422(5)(a)(iii), I think that it not only is confidential under SSL 422(4), but it also retains its confidentiality under SSL 422(5), much like medical, mental health, substance abuse records do under the HIPAA regulations, and NYS Public Health Law and Mental Hygiene Law. So you would look at both SSL 422(4)(A)(I) (the law enforcement exception), SSL 422(4)(A)(f) (the grand jury exception) and 422(5). There is no provision in 422(5) to disclose to a grand jury, and as I mentioned above, the only law enforcement exception in 422(5) is to investigate/prosecute a falsely reporting an incident charge.

So, ultimately, I don't think that CPS can make the disclosure, even if the unfounded records are properly in an active CPS case.

I would say the same if there was a request made by the DA to OCFS, but that is up to them. Also, there is probably an argument to be made that it is OCFS's job to

investigate the operation of an LDSS CPS, so if the DA has a concern about how the CPS investigated a case that they should be notifying OCFS.

Looking at the relevant sections of SSL §422(5):

5. (a) Unless an investigation of a report conducted pursuant to this title that is commenced on or before December thirty-first, two thousand twenty-one determines that there is some credible evidence of the alleged abuse or maltreatment or unless an investigation of a report conducted pursuant to this title that is commenced on or after January first, two thousand twenty-two determines that there is a fair preponderance of the evidence that the alleged abuse or maltreatment occurred, all information identifying the subjects of the report and other persons named in the report shall be legally sealed forthwith by the central register and any local child protective services which investigated the report. **Such unfounded reports may only be unsealed and made available:**
(i) to the office of children and family services for the purpose of supervising a social services district;
(ii) to the office of children and family services and local or regional fatality review team members for the purpose of preparing a fatality report pursuant to section twenty or four hundred twenty-two-b of this chapter;
(iii) **to a local child protective service, the office of children and family services, or all members of a local or regional multidisciplinary investigative team or the justice center for the protection of people with special needs when investigating a subsequent report of suspected abuse, neglect or maltreatment involving a subject of the unfounded report, a child named in the unfounded report, or a child's sibling named in the unfounded report pursuant to this article or article eleven of this chapter**;
(iv) to the subject of the report; and
(v) **to a district attorney, an assistant district attorney, an investigator employed in the office of a district attorney, or to a sworn officer of the division of state police, of a city, county, town or village police department or of a county sheriff's office when such official verifies that the report is necessary to conduct an active investigation or prosecution of a violation of subdivision four of section 240.50 of the penal law.**

(b) **Persons given access to unfounded reports pursuant to subparagraph (v) of paragraph (a) of this subdivision shall not redisclose such reports except as necessary to conduct such appropriate investigation or prosecution and shall request of the court that any copies of such reports produced in any court proceeding be redacted to remove the names of the subjects and other persons named in the reports or that the court issue an order protecting the names of the subjects and other persons named in the reports from public disclosure**. The local child protective service or state agency shall not indicate the subsequent report solely based upon the existence of the prior unfounded report or reports. Notwithstanding

section four hundred fifteen of this title, section one thousand forty-six of the family court act, or, except as set forth herein, any other provision of law to the contrary, an unfounded report shall not be admissible in any judicial or administrative proceeding or action; provided, however, an unfounded report may be introduced into evidence: (i) by the subject of the report where such subject is a respondent in a proceeding under article ten of the family court act or is a plaintiff or petitioner in a civil action or proceeding alleging the false reporting of child abuse or maltreatment; or (ii) in a criminal court for the purpose of prosecuting a violation of subdivision four of section 240.50 of the penal law. Legally sealed unfounded reports shall be expunged ten years after the receipt of the report.

Also, it appears that it is OCFS that is charged with supervising the LDSS, not the DA- "(i) to the office of children and family services for the purpose of supervising a social services district"

Q We recently filed an Art 10 petition and asked for a 1027 removal when the matter was heard at approximately 4:30 pm that same afternoon. We believed mother was a member of an Indian tribe, but were unable to confirm before the case was heard, which we advised the court of same during the hearing. We later learned that mother is registered with a tribe. We spoke to the tribe's attorney in Michigan and reviewed 25 USC 1914 that provides for a "do over" for the 1027. The tribe will file a motion to intervene and we will perhaps do the 1027 again.

The CPS investigation is still open. Regarding documents to be provided to the tribe, assuming the court grants the motion to intervene (25 USC 1911(c)) other than the petition, removal order, OP, what of the CPS record can be shared regarding the open investigation? They have requested the following -

> We also need copies of CPS report/history for the family and the final CPS investigative report for this current case so we can review.
> We will need the mother to sign a release of information so we can provide a family tree so placement preference is being followed.

A Obviously, you can't provide a copy of the final report, since it doesn't exist yet, and I don't know that you can compel the mother to sign anything.

Would the tribe be intervening in the context of having the case transferred to their jurisdiction for the purposes of the ongoing foster care aspect? If yes, they might fit under the SSL 422(4)(A)(o). Here's what the New York State Child Protective Services Manual (Chapter 13—Section A—Page A-3 says:

Releasing information to other agencies

CPS and authorized agencies providing preventive, foster care, and/or adoption services share responsibility for assisting families to succeed in meeting the needs of their children. Staff members' ability to access information relevant to the families they are serving provides significant benefits to all staff as well as to children and families.

When an LDSS refers a child or family to a VA for foster care or adoption services, to a preventive services agency, or when a child or a child's family has referred themselves for such services at the request of CPS or the LDSS, the agency providing such services is authorized to receive reports or other necessary information from "under investigation" or "indicated" reports of abuse or maltreatment. Persons or agencies given access to information may exchange such information to facilitate the provision or coordination of services to the child or the child's family [SSL §422(4)(A)(o)]. Other than the exchange of information to facilitate the provision or coordination of services, service providers are prohibited from redisclosing CPS information.

If the tribe would be taking over the CPS investigation the SSL 422(4)(A)(s) exception might fit, although I don't know if the tribe would count as a "state" within the meaning of that section.

Other than that, the mother can always request CPS information and turn that over to the tribe, although that's the worst way, since the respondent might do some editing before they give the material to the tribe.

If the case gets to a certain stage, particularly in termination of parental rights case, a "qualified expert" is appointed to make recommendations concerning placement. I think that the expert can be provided with CPS information.

Re-sentencing under Criminal Procedure Law §440.47

Q. I have a question for you regarding the new CPL §440.47 (attached) opportunity criminal defendants have to have their sentences revisited if they can show they have been a victim of abuse in their childhood (loose summary of what the CPL entails). We are seeing an increase in defendants requesting SCR records where they are the named youth on the matter.

SSL 422 does not cover the youth's receipt of the SCR reports for indicated or unfounded cases. I am curious how you would analyze this scenario. I did not provide the records in the last request.

A. Criminal Procedure Law §440.47, which was added in 2019, created a means for certain sentenced prisoners before the effective date of the statute to make a request to apply for re-sentencing under Penal Law §60.12 PL §60.12 permits a court to make an alternate sentence upon a determination following a hearing that (a) at the time of the instant offense, the defendant was a victim of domestic violence subjected to substantial physical, sexual or psychological abuse inflicted by a

member of the same family or household as the defendant as such term is defined in subdivision one of section 530.11 of the criminal procedure law; (b) such abuse was a significant contributing factor to the defendant's criminal behavior; (c) having regard for the nature and circumstances of the crime and the history, character and condition of the defendant, that a sentence of imprisonment pursuant to section 70.00, 70.02, 70.06 or subdivision two or three of section 70.71 of this title would be unduly harsh.

If the court grants the request, the court shall notify such person that he or she may submit an application for resentencing. Upon such notification, the person may request that the court assign him or her an attorney for the preparation of and proceedings on the application for resentencing pursuant to this section. The application must application for resentencing pursuant to this section must include at least two pieces of evidence corroborating the applicant's claim that he or she was, at the time of the offense, a victim of domestic violence subjected to substantial physical, sexual or psychological abuse inflicted by a member of the same family or household as the applicant as such term is defined in CPL §530.11, which is the CPL section for family offense matters.

At least one piece of evidence must be either a court record, pre-sentence report, social services record, hospital record, sworn statement from a witness to the domestic violence, law enforcement record, domestic incident report, or order of protection. Other evidence may include, but shall not be limited to, local and state department of corrections records, a showing based in part on documentation prepared at or near the time of the commission of the offense or the prosecution thereof tending to support the person's claim, or when there is verification of consultation with a licensed medical or mental health care provider, employee of a court acting within the scope of his or her employment, member of the clergy, attorney, social worker, or rape crisis counselor, or other advocate acting on behalf of an agency that assists victims of domestic violence for the purpose of assisting such person with domestic violence victim counseling or support.

(e) If the court finds that the applicant has complied with the provisions of paragraph (c) of this subdivision, the court shall conduct a hearing to aid in making its determination of whether the applicant should be resentenced in accordance with PL §60.12. At such hearing the court shall determine any controverted issue of fact relevant to the issue of sentencing. Reliable hearsay shall be admissible at such hearings.

Based upon the statute, the defendant does not have to submit anything in the way of records to make the initial request to make the application. However, once permission has been granted to make the application, a “social services record” is one of the several pieces of evidence that may be submitted.

SSL §422(4)(A)(d) (d) any person who is the subject of the report or other persons named in the report;

18 NYCRR 432.1

(e) *Other person named in the report* shall mean and be limited to the following persons who are named in a report of child abuse or maltreatment other than the subject of the report: any child and/or children who are named in a report made to the State Central Register of Child Abuse and Maltreatment and the parent, guardian or other person legally responsible for such child(ren) which parent, guardian or other person legally responsible for such child(ren) have not been named in the report as the person allegedly responsible for causing injury, abuse or maltreatment to such child(ren) or as allegedly allowing such injury, abuse or maltreatment to be inflicted on such child(ren).

So, in the context of the application, I would say that the CPS record could go to the child, if they are the defendant. I would think that they could also go to a parent who was named in the report as well.

However, if the CPS report was unfounded, there is no provision in SSL §422(5) that permits release to an "other person named in the report."

In the context of the hearing, if the court found that the CPS record was necessary to determine an issue before the court, it could, under SSL §422(4)(A)(e) order production to the court of records concerning an indicated referral.

There is no exception in SSL §422(5) that would permit the court to obtain or put in evidence, records from an unfounded report.

Temporary Assistance Records

Q. We just received notice of a subpoena for a TA application completed by a woman who is currently in court on a spousal support matter.

The father's attorney gave notice of a subpoena for the TA application as the woman placed her income in question by filing the spousal support petition.

I did not see anything in your booklet re subpoena. Can it be produced if the court finds the info necessary for a determination of an issue before it?

A. I think that the court would have to "find" that the records are material and relevant to the case at bar, although there are no required findings as required for CPS or APS records. In this type of case and for this type of subpoena you might find that the argument might be more likely to be between opposing counsel as opposed to between you and the party seeking the records.

Q. A person presented before TA looking for homeless placement, He was placed. TA subsequently learned through routine investigation that he is a non-compliant registered sex offender from the State of Connecticut. There are no conditions of probation. Can DCFS Special Investigations report it to either local LE or CT?

A. There does not seem to be any general exception to confidentiality that answers this question.

SSL 136 has a couple of exceptions that permit release of TA information to law enforcement:

> 2. All communications and information relating to a person receiving public assistance or care obtained by any social services official, service officer, or employee in the course of his or her work shall be considered confidential and, except as otherwise provided in this section, shall be disclosed only to the commissioner, or his or her authorized representative, the commissioner of labor, or his or her authorized representative, the commissioner of health, or his or her authorized representative, the welfare inspector general, or his or her authorized representative, the county board of supervisors, city council, town board or other board or body authorized and required to appropriate funds for public assistance and care in and for such county, city or town or its authorized representative or, by authority of the county, city or town social services official, to a person or agency considered entitled to such information. Nothing herein shall preclude a social services official from reporting to an appropriate agency or official, including law enforcement agencies or officials, known or suspected instances of physical or mental injury, sexual abuse or exploitation, sexual contact with a minor or negligent treatment or maltreatment of a child of which the official becomes aware in the administration of public assistance and care nor shall it preclude communication with the federal immigration and naturalization service regarding the immigration status of any individual.
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> 5. A social services official shall disclose to a federal, state or local law enforcement officer, upon request of the officer, the current address of any recipient of family assistance, or safety net assistance if the duties of the officer include the location or apprehension of the recipient and the officer furnishes the social services official with the name of the recipient and notifies the agency that such recipient is fleeing to avoid prosecution, custody or confinement after conviction, under the laws of the place from which the recipient is fleeing, for a crime or an attempt to commit a crime which is a felony under the laws of the place from which the recipient is fleeing, or which, in the case of the state of New Jersey, is a high misdemeanor under the laws of that state, or is violating a condition of probation or parole imposed under a federal or state law or has

> information that is necessary for the officer to conduct his or her official duties. In a request for disclosure pursuant to this subdivision, such law enforcement officer shall endeavor to include identifying information to help ensure that the social services official discloses only the address of the person sought and not the address of a person with the same or similar name.

From what you wrote, it does not look like either of those fit.

There is also SSL 145, which relates to the reporting of welfare fraud to law enforcement:

Social Services Law §145 Penalties

> 1. Any person who by means of a false statement or representation, or by deliberate concealment of any material fact, or by impersonation or other fraudulent device, obtains or attempts to obtain, or aids or abets any person to obtain public assistance or care to which he is not entitled, or does any wilful act designed to interfere with the proper administration of public assistance and care, shall be guilty of a misdemeanor, unless such act constitutes a violation of a provision of the penal law of the state of New York, in which case he shall be punished in accordance with the penalties fixed by such law. Failure on the part of a person receiving public assistance or care to notify the social services official granting such assistance or care of the receipt of money or property or income from employment or any other source whatsoever, shall, upon the cashing of a public assistance check by or on behalf of such person after the receipt of such money, or property, or income, constitute presumptive evidence of deliberate concealment of a material fact. Whenever a social services official has reason to believe that any person has violated any provision of this section, he shall promptly refer the facts and evidence available to him to the appropriate district attorney or other prosecuting official, who shall immediately evaluate the facts and evidence and take appropriate action.\

Based upon what you wrote I don't know if this section makes any difference either. How did your DSS come to find out about this person's status as non-compliant with registration? That might in and of itself constitute welfare fraud.

In response to your question about the disclosure of information pertaining to sex offenders, the question may be addressed by OTDA regulation 18 NYCRR § 357.2, which addresses the confidentiality of information pertaining to PA applicants and provides in subdivision (e) that:

> Disclosure to Federal, State or local official. (1) Information may be disclosed to any properly constituted authority. This includes a legislative body or committee upon proper legislative order, an administrative board charged with investigating

or appraising the operation of public welfare, law enforcement officers, grand juries, probation and parole officers, government auditors, and members of public welfare boards, as well as the administrative staff of public welfare agencies.

There is a regulation and OTDA directive that are particular to the housing of sex offenders:

18 NYCRR §352.36 and 10 ADM-07 (“Provision of Temporary Housing Assistance (THA) to Sex Offenders – Chapter 568 of the Laws of 2008 (ny.gov).”)

Also, pursuant to Penal Law §§ 259-c (14), certain sex offenders may be prohibited from residing with 1,000 feet from schools or facilities used in the care and treatment of minors.

Information about a sex offender’s obligations is available on the NY DCJS website at Sex Offender Registry Frequently Asked Questions - NY DCJS.

Q. Our Legislators would like DSS to notify them of the zip codes of all addresses receiving rental assistance.

My argument would be that any and all information obtained as a result of the administrative of public assistance (including zipcodes) is confidential under 18NYCRR 357.3 and SSL 136. These public officials are not seeking the info. for a purpose related to the admin. of PA.

A. This one is kind of a close call- statistical tabulations are usually subject to disclosure, even via a FOIL request. If the only thing that they are asking for is a list of zip codes for which shelter allowance is being paid, that's probably okay, although once we start talking about the numbers of addresses within those zip codes there are issues with those being used to identify individuals. If this information is already something that your DSS has published before, like in an annual report, the Legislature can get that. If they can give any sort of "administration of public assistance" reason, that would allow them to receive the information.

SSL 136 does permit a county legislature (which is the equivalent of the "county board of supervisors" stated in the statute),among others, to obtain confidential information related to an applicant or recipient of public assistance:

Social Services Law §136 (Protection of public welfare records)

1. The names or addresses of persons applying for or receiving public assistance and care shall not be included in any published report or printed in any newspaper or reported at any public meeting except meetings of the county board of supervisors, city council, town board or other board or body authorized and required to appropriate funds for public assistance and care in and for such county, city or town;

2. All communications and information relating to a person receiving public assistance or care obtained by any social services official, service officer, or employee in the course of his or her work shall be considered confidential and, except as otherwise provided in this section, shall be disclosed only to the commissioner, or his or her authorized representative, the commissioner of labor, or his or her authorized representative, the commissioner of health, or his or her authorized representative, the welfare inspector general, or his or her authorized representative, the county board of supervisors, city council, town board or other board or body authorized and required to appropriate funds for public assistance and care in and for such county, city or town or its authorized representative…

4. No person or agency shall solicit, disclose, receive, make use of, or authorize, knowingly permit, participate in, or acquiesce in the use of, any information relating to any applicant for or recipient of public assistance or care for commercial or political purposes.

However, the regulations require that it be for the administration of public assistance:

18 NYCRR 357.2 Prohibition against disclosure of information

(a) Officers and employees of social services districts shall not reveal information obtained in the course of administering public assistance for purposes other than those directly connected with the administration of public assistance, except for the name, address and the amount received by or expended for a recipient of public assistance when the appropriating body or social services official has authorized their disclosure to an agency or person deemed entitled to it pursuant to section 136 of the Social Services Law.

and

18 NYCRR 357.3 Basis for disclosure of information
(a) Safeguards in disclosing in disclosing information. Information shall be released to another agency or person only when the public welfare official providing such data is assured that:

(1) the confidential character of the information will be maintained;
(2) the information will be used for the purposes for which it is made available, such purposes to be reasonably related to the purposes of the public welfare program and the function of the inquiring agency; and
(3) the information will not be used for commercial or political purposes.

What is the purpose that they are asking for? If they could say anything that relates to an administration of public assistance purpose, they could get all that and more.

Q. Do you have any comments on universal consent forms?

A. This consent form is a modification of the State HIPAA form. As such, it only seems to apply to medical, substance abuse treatment and mental health treatment, all of which are covered by HIPAA, as well as the NYS Public Health Law and Mental Hygiene Law. Assuming that providers are okay with honoring this form, it seems like a good idea, at least as far as transmitting information between service providers, including the DSS.

The area where it gets tricky with these consent forms is where a third party wants to use the form as a means of obtaining LDSS information. Although this consent form helps in that respect as far as satisfying the confidentiality aspect of medical, substance abuse, and mental health records, a consent form doesn't satisfy the confidentiality requirements of social services records. So, you have to beware of a situation where a third party presents one of these consents to your DSS for these (or any other type of DSS) records and there is no statutory or regulatory authority to release to that party.

You also have to beware of using these consents when you get into a litigation situation. For example, if you have a CPS case where the respondent has signed one of these releases for say substance abuse treatment records, and now you have a violation petition alleging that they have failed at that treatment, you should be applying for a subpoena rather than relying upon the consent to obtain the records.

Q. Are we required to give building access to “First Amendment” auditors or others who wish to make video or audio recordings in our DSS buildings?

A. While the public has a general right to have access to public buildings, there are limitations that may be made when certain public spaces are utilized for the transaction of official business.

The cases in which courts have analyzed the forum status of Departments of Social Services have consistently concluded that social services agencies are “Non-Public Forums”:

In *Make the Road by Walking, Inc. v. Turner*, 378 F.3d 133, (2d Cir. 2002), the Second Circuit Court of Appeals found that welfare center waiting rooms were nonpublic forums because the New York City Human Resources Administration enforced a policy reserving those lobby waiting rooms for the transaction of official business, including for welfare claimants and those accompanying them.

In Families Achieving Independence & Respect v. Nebraska Department of Social Services, 11 F.3d 1408, 1419 (8th Cir. 1997), the Eighth Circuit held that a Department of Social Services lobby was a nonpublic forum, finding that the lobby’s principal purpose was to provide services to the public. The court noted the lobby was a high-traffic “workplace where government employees provide financial assistance and social services to thousands of clients,” concluding that “[k]eeping the Lobby generally closed to outside groups helps prevent additional congestion and the resultant disruption.”

In *Nathaniel v. Iowa Department of Human Services*, No. 4:05-CV-00044, 2005 WL 8157815 at 9 (S.D. Iowa Sept. 16, 2005), the Southern District of Iowa held that the Iowa Department of Human Services was a nonpublic forum.

If a local district develops a policy, the parameters of those policies should be clearly and consistently communicated to the public through signage or other means. As in Turner, policies that are clearly communicated and consistently enforced are more likely to be credible evidence of a government's intent for a specific space.