
Coates' Canons Blog: Access to Confidential Client Records by Social Services Governing Boards

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Child abuse investigations and case files. Applications for Medicaid, child care subsidies, and cash assistance. Financial records related to exploitation of disabled adults. These are only a few examples of the types of records maintained by county departments of social services. These records obviously contain very sensitive information and, as a result, are protected by numerous federal and state confidentiality laws. Social services directors, social workers, attorneys, and others involved with providing assistance to individuals all need access to this information in order to do their work and the laws clearly authorize them to have it. But what about the agency's governing board? Does the law authorize board members to have access to identifiable information contained in these sensitive records? This post explores the relevant laws and highlights particularly restrictive provisions that apply in two areas: child protective services and public assistance.

Who is the Governing Board for a Social Services Agency?

In early 2012, there would have been a fairly straightforward response to this initial question. At that time, almost every county had a social services agency that was governed by an appointed county board of social services. Since that time, the law was amended to allow counties to adopt different approaches to agency organization and governance. Now a county's social services governing board may be:

- An appointed social services (DSS) board (73 counties),
- An appointed consolidated human services (CHS) board (10 counties), or
- The elected board of county commissioners serving as either a social services board or consolidated human services board (17 counties).

If you are craving more details about human services organization and governance, this website has lots of background information about the change in the law as well as a link to map that shows which counties have elected which type of governance structure.

For the purposes of this blog post, the key thing to know is that when a county adopts a different type of governing board, that board assumes almost all of the powers and duties of a county board of social services (G.S. 153A-77(d)). As a result, all three types of governing boards – DSS board, CHS board, or board of county commissioners serving as the governing board – have the same right of access to information.

What Does the Governing Board Do?

A social services agency's governing board oversees the agency and has specific legal powers and duties. Some of the powers and duties appear in G.S. 108A-9, while others are found in other statutes and regulations. One of the primary responsibilities of the board is to consult with and advise the social services director. Boards are also often involved with program evaluation, quality improvement, budget development and review, and community education and advocacy. Some are involved with fraud investigations related to public assistance programs. In the counties with a DSS board or where the board of county commissioners is serving as the governing board, the board is also responsible for hiring, evaluating, disciplining, and dismissing the social services director. By contrast, in a county with a consolidated human services board, the county manager hires the director with the *advice and consent* of the governing board. For more

details about social services boards, see this handbook or this list of FAQs.

Does the Governing Board Have a Right of Access to Confidential Client Information?

The governing board has a right of access to some confidential client information. A state statute, G.S. 108A-11, grants broad access rights to governing board members:

Every member of the county board of social services may inspect and examine any record on file in the office of the director relating in any manner to applications for and provision of public assistance and social services authorized by this Chapter. No member shall disclose or make public any information which he may acquire by examining such records.

The term “public assistance” encompasses programs such as Medicaid, Work First, Food and Nutrition Assistance, and State-County Special Assistance. The term “social services” encompasses core social work functions such as child protective services (CPS) and adult protective services (APS).

This statute suggests that the governing board should be allowed to have access to any and all confidential client records maintained by the social services agency. The law does not, however, stand alone. There are other confidentiality laws that may narrow the right of access by board members, particularly with respect to CPS information and public assistance information. Therefore, it is important that directors of social services or other administrators tread carefully when responding to any requests for records by board members.

CPS Information

Several federal and state laws govern confidentiality of CPS information. Because they may be more stringent and/or more specific, some of these laws can be interpreted to prohibit disclosure of identifiable CPS information to the governing boards, despite the state statute cited above that affords them a broad right of access.

At the state level, the overarching confidentiality law, G.S. 108A-80, applies to all public assistance and social services records. Taken together with the implementing regulations, this law prohibits disclosure of all information “directly or indirectly derived” from the county’s records except in a few circumstances. It is unlikely that this general law overrides the statutory requirement that governing board members be provided with access because the two laws can be read in harmony. However, two more specific confidentiality laws – G.S. 7B-302(a1) and G.S. 7B-2901 – could be interpreted to limit the governing board’s right of access.

- G.S. 7B-302(a1) applies broadly to all of the CPS-related information maintained by DSS. It provides that “all information received by the department of social services, including the identity of the reporter, shall be held in strictest confidence by the department” and authorizes disclosure in limited circumstances.
- G.S. 7B-2901 applies to court and agency records of children who are in protective custody. Those records are also confidential and may only be disclosed in limited circumstances.

Neither of these two laws expressly authorize access by governing boards. See also 10A NCAC 70A .0113 (implementing regulation is also silent about access by the governing board). A 1995 advisory opinion issued by the North Carolina Department of Justice concluded that these more specific provisions trumped the general statute and therefore board members should not be given a general right of access to child protective services records. In a somewhat confusing turn, the opinion also said that “DSS directors may in their discretion bring individual juvenile records before the social services board for their review.” It’s unclear where the director would get authority to make isolated disclosures in such cases.

Federal laws also affect board members' access to this information. There are several funding streams that come with strings attached. Title IV-B and E of the Social Security Act in particular provides a significant amount of funding for foster care and adoption assistance programs as well as training for child welfare staff. This funding touches much of a county agency's child protective services program. There is a complex web of cross-references tied to Title IV-E that ultimately requires social services agencies to import federal public assistance confidentiality regulations to programs that receive funding from that program. (45 C.F.R. § 1355.21; 45 C.F.R. 1355.30; 45 C.F.R. 205.50). This imported confidentiality regulation requires states to have a plan in place that restricts the use and disclosure of program-related information to administration of the program and other limited purposes.

Notably, the regulation prohibits disclosure of identifiable client information "to any Federal, State, or local committee or legislative body" other than those related to an audit or similar activity conducted in connection with administration of the program. 45 C.F.R. 205.50(a)(iii). One could argue that the social services governing board is more like "program administration" rather than an outside "local committee" or "legislative body," and therefore should not be subject to this limitation. It seems reasonable that *in some circumstances* the board could be serving in an administrative capacity but it is probably unusual.

Reading this federal law together with the state law and the advisory opinion, it seems clear that counties should rarely, if ever, share identifiable CPS information with the social services governing board. Many of the board's oversight and administrative functions related to CPS should be possible using de-identified information.

Public Assistance Information

The same federal regulation cited above, 45 C.F.R. 205.50, applies to many of the public assistance programs administered by county social services agencies, including Work First, Medicaid, and Health Choice. The food and nutrition assistance program is subject to a different body of federal regulations but they also strictly limit disclosure of information. 7 C.F.R 272.1(c).

There is a stronger argument for public assistance programs that the governing boards are involved with program administration or are conducting "audits" as allowed by the law. Specifically, some social services boards play a role in fraud investigations and program oversight. In those instances, it seems reasonable to assume that they may need access to identifiable, confidential records. See, e.g., *Finance Committee of Falmouth v. Falmouth Board of Public Welfare*, 345 Mass. 579 (1963) (discussing the need for disclosure of public assistance information for program oversight and audits). If the governing board is requesting access to identifiable information from one of the programs subject to these federal regulations for another purpose, disclosure is probably not allowed.

Some public assistance programs, such as the State-County Special Assistance program, are not federally funded and therefore are not subject to strict federal confidentiality restrictions. Rather, they are subject only to the overarching state confidentiality law, G.S. 108A-80. For such programs, the specific state statute authorizing access for governing board members would likely be controlling and therefore disclosure to the governing board would be permitted.

Is the Governing Board Required to Keep Information Confidential?

Yes. If a governing board is provided with access to confidential information either through its role in program administration, oversight, or pursuant to G.S. 108A-11, board members should be advised of their continuing obligation to protect that information. The federal confidentiality laws would continue to apply as would the duties spelled out in G.S. 108A-11 and G.S. 108A-80. There are both criminal and civil consequences for failing to comply with applicable confidentiality laws. Perhaps one of the most significant would be the risk of losing federal funding. In practice, maintaining confidentiality of these extraordinarily sensitive records is essential for social services agencies to be able to do their work and do it well. The public needs to have confidence that their information will be protected.

Where Can You Learn More?

If your interest in social services confidentiality is now piqued, you may want to pick up this new book about disclosing protective services records. In addition, there is a new online database of social services confidentiality laws. The database is sorted, tagged, and includes external links to resources. It includes not only state and federal statutes and



regulations, but also selected cases, advisory opinions, and policy documents. Your thoughts and suggestions about these new resources are welcome.

Links

- www.sog.unc.edu/resources/microsites/north-carolina-public-health-law/consolidated-human-services-agencies-chsas
- ncleg.net/EnactedLegislation/Statutes/PDF/BySection/Chapter_153A/GS_153A-77.pdf
- www.sog.unc.edu/publications/books/handbook-county-social-services-boards
- www.sog.unc.edu/resources/faq-collections/social-services-boards-frequently-asked-questions
- ncleg.net/EnactedLegislation/Statutes/PDF/BySection/Chapter_108A/GS_108A-11.pdf
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- ncleg.net/EnactedLegislation/Statutes/PDF/BySection/Chapter_7B/GS_7B-302.pdf
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