

Number: TBD
EFFECTIVE DATE: July 10, 2000

PROCEDURE STATEMENT

Policy Area: Supervision

Issue: Release of Offender Information

Action/Guidance: Sensitive Offender File Information

Context: CSOSA is committed to ensuring the authorized disclosure of offender file information. It is CSOSA's policy to ensure that sensitive information contained in an offender's supervision file remains undisclosed and such information may not be released to anyone without a release of information authorization by the offender. **Note: This policy does not preclude the release of offender file information to the United States Parole Commission or the sentencing judge.**

I. Policy

A. Sensitive Offender File Information

Information contained in an offender's supervision file may be released only after review by the Freedom of Information Act ("FOIA") Office of CSOSA. Once the FOIA Office has determined that disclosure is permissible, the FOIA Office may release CSOSA information contained in supervision files or databases under the circumstances and subject to the limitations set forth in greater detail below.

CSOSA policy does not permit staff to reveal that an offender is participating in alcohol or drug abuse treatment to anyone without appropriate authority. However, CSOSA policy permits staff within a treatment program to make certain disclosures to each other and to those individuals with direct administrative control over the program. The restrictions on disclosure contained in this policy do not apply to communications of information between or among personnel having a need for the information in connection with their duties that arise out of the provision of diagnosis, treatment, quality assurance, or referral for treatment of alcohol or drug abuse if the communications are (1) within a program or (2) between program staff and an entity that has direct administrative control over that program.

CSOSA policy requires that information from the D.C. Pretrial Services Agency ("PSA") concerning an offender/defendant, whether in hard-copy or electronic format, may only be disclosed to a CSOSA employee who is not employed by PSA with the express written consent of that offender/defendant as demonstrated by the offender's/defendant's execution of the "Consent for Use of Confidential Information Form: Drug Testing and Drug Treatment Records."

CSOSA policy restricts the release of information concerning the medical or mental health condition of persons under supervision to disclosures authorized by the FOIA, the Privacy Act, and District of Columbia law governing the confidentiality of HIV/AIDS and mental health records.

CSOSA policy permits the release of information obtained through our social and rehabilitative efforts to social services agencies interested in the defendant's/offender's rehabilitation only with the express written consent of the defendant/offender. Mental health and sex offender treatment information may only be disclosed if the offender has

signed the “Consent for the Release of Sensitive Offender Information: Mental Health and Sex Offender Treatment Waiver.” Substance abuse treatment information may only be disclosed if the offender has signed the “Consent for the Release of Sensitive Offender Information: Substance Abuse Treatment Waiver.” Similarly, HIV/AIDS and tuberculosis treatment information may only be disclosed if the offender has signed the “Consent for the Release of Sensitive Offender Information: HIV/AIDS and Tuberculosis Treatment Waiver.” These forms allow for the reciprocal exchange of vital treatment information between CSOSA and treatment providers or any other entity to which the offender has authorized release of the information. Disclosure of substance abuse treatment information across component entities within CSOSA for purposes other than diagnosis, treatment, or referral for treatment also requires the offender’s written consent.

CSOSA policy permits the release of information concerning a defendant/offender to that defendant/offender and his/her attorney in accordance with the FOIA/Privacy Act.

CSOSA policy requires that all subpoenas and court orders be served upon CSOSA’s FOIA Office.

CSOSA will obtain the regulatory authority to make certain routine use disclosures of the information it collects. Such authority will permit CSOSA staff to share general offender information with the MPD. Occasionally, law enforcement personnel may request documents from an offender’s supervision file in order to aid an ongoing criminal investigation. CSOSA policy permits responses to such inquiries to be made verbally, but not in writing. CSOs are not to release copies of official file documents to law enforcement personnel.

Certain criminal justice agencies have limited access to the Automated Bail Agency Database (ABA DABA). They can review information concerning Name, Employment, and Probation/Parole screens to the extent that it is otherwise available in the public record. They can review the Address, Prior Cases, Arrest, Charge, Docket, Release, Appearance, and Bench Warrant screens. Agencies with limited access to ABA DABA are: the United States Attorney’s Office, the Metropolitan Police Department, the D.C. Department of Corrections, the United States Marshals Service, the United States Parole Commission, the Federal Bureau of Prisons, and law enforcement and criminal justice agencies from other jurisdictions. Employees should refer requests for any additional information to the FOIA Officer.

The execution of a search warrant on premises where sensitive records are stored also requires the issuance of an order by a court of competent jurisdiction. All such matters are to be referred to the OGC.

B. Community Justice Partnerships

The Community Justice Partnership (“CJP”) initiative seeks to combine the resources of the Metropolitan Police Department (“MPD”), CSOSA, other law enforcement agencies, and the community to increase the accountability of individuals on post-trial release and enhance public safety. In furtherance of these goals, it is essential that certain information contained in an offender’s file be shared between CSOSA and law enforcement agencies.

This section guides the sharing of offender file information between CSOSA staff and law enforcement agencies within the context of the CJP.

1. This information includes names, home address, date of birth, sex, race, social security number (if available), PDID/DCDC number, current charges, supervision commencement and expiration dates, conditions of release (special and general), and warrant information.
2. CSOSA staff may share information regarding an offender's high-risk status including unspecified drug use history, incidents of violence, and sex offender reporting requirements upon request from law enforcement entities. This information is essential in identifying those individuals whose conduct indicates the possibility of relapse and allows for corrective action to be taken before the offender slides into deeper substance abuse, criminality, and risk to the community.

Note: This section does not authorize CSOSA staff to share specific drug test results or treatment information with law enforcement agents unless a release is signed by the offender. CSOSA staff are prohibited from disclosing any information that would identify an offender as a participant in a drug or alcohol treatment program, either directly or by implication, unless the offender has signed a waiver authorizing the release of such information. Without specific written consent from an offender, CSOSA staff may only disclose to law enforcement agents that an offender has a history of unspecified illegal drug use, has certain conditions of supervision, and, where applicable, that an offender has relapsed. No additional information may be provided, even upon further questioning by law enforcement. CSOs are not to release copies of official file documents to law enforcement personnel.

This section does not authorize CSOSA staff to share sensitive offender file information with the public.

C. Media Requests for Offender Interviews

Representatives of the media may at times request direct access to an offender for the purposes of conducting personal interviews, obtaining statements for the record, photographs, etc. CSOSA staff are prohibited from arranging such meetings or discussions between an offender and the media. All media requests are to be directed to the Office of Legislative, Intergovernmental and Public Affairs ("OLIPA"). OLIPA will review the nature of the media request and all relevant privacy and security issues before authorizing any interaction between offenders and the media. The final decision to grant or deny a media request for an interview will be made by the offender and/or his or her representative. If a media interview is approved and the offender elects to be interviewed, the offender will be required to provide express written consent by the execution of the CSOSA Media Consent form.

D. WALES/NCIC

CSOSA employees also have access to a variety of automated criminal justice systems. All use of these systems is monitored. The automated criminal justice data base system is to be used for legitimate law enforcement purposes only. Any misuse, inappropriate disclosure or dissemination of this information, including personal use, is strictly

prohibited and may result in disciplinary action. In addition, WALES and NCIC regulations provide for a penalty (fine and/or imprisonment) for misuse or unlawful disclosure of the information contained therein.

E. Criminal and Civil Penalties for Unauthorized Disclosures

Federal law (42 U.S.C. § 290ee-3(f) and 42 U.S.C. § 290dd-3(f); 42 C.F.R. § 2.4) also provides a criminal penalty (\$500 for a first offense and up to \$5,000 for each subsequent offense) for the unlawful disclosure of alcohol and drug abuse treatment records. Violation of the Privacy Act may result in a misdemeanor conviction and a fine of up to \$5,000 (5 U.S.C. § 552a(i)).

District of Columbia law provides for a fine of up to \$5,000 and up to 90 days' imprisonment, or both, for willful misdemeanor disclosure of HIV/AIDS records (D.C. Code § 6-1204) and a fine of up to \$1,000, in addition to damages, court costs and attorney's fees, for unlawful disclosure of mental health records (D.C. Code §§ 6-2061-2062.) In addition, employees may face personal civil liability for unauthorized disclosures, which are outside the scope of their employment.

F. Duty of CSOSA Employees

As employees of CSOSA, staff are privy to information that is sensitive. By signing the "Non-Disclosure of Sensitive Information Agreement," all CSOSA staff acknowledge that:

1. They understand the Agency's Sensitive Information Policy as stated above. Specifically, they understand the circumstances under which employees can release information, the persons to whom information can be released, the nature of the information that can be released, and their responsibilities in maintaining and releasing information.
2. They understand the penalties for improperly disclosing information.
3. They agree not to disclose any information except where permissible under statute, CSOSA policy, or court order.
4. After leaving CSOSA, they agree not to disclose any information obtained while employed by CSOSA, without the express written authorization of the OGC.

G. Adverse Action

Any employee violating this policy is subject to disciplinary action.

II. Procedure for Releasing Offender File Information

- A. Only CSOSA's FOIA Office may authorize the release of sensitive information. The FOIA Office handles the actual release of information from an offender's file.
- B. In order for information that is sensitive and otherwise nondisclosable to be released, the offender must sign an "Authorization for Release of Information Waiver." This form states, among other things, the extent or nature of information to be disclosed and how long the authorization is valid. All "Authorization for Release of Information

Waivers” are to be placed in the appropriate offender’s file by the CSO. In the context of the CJP, CSOSA staff may verbally disclose limited sensitive offender information so long as the offender has signed an “Authorization for Release of Information Waiver.” In the absence of a signed waiver, CSOSA staff may only disclose offender information that is of a general nature (See Section I.B.: Community Justice Partnerships).

- C. Subpoenas should be served upon CSOSA’s FOIA Office. In the event a court order or subpoena is served upon CSOSA personnel, such orders shall be forwarded to the FOIA Office for review within one (1) business day of receipt by the CSOSA employee who accepts service.

III. Statutory Authority: 42 U.S.C. § 290ee-3(f); 42 U.S.C. § 290dd-3(f); 42 C.F.R. § 2.4; 5 U.S.C. § 552a(i); D.C. Code § 6-1204; D.C. Code §§ 6-2061-2062

IV. Procedural References/Supercedes:

- References: Interim FOIA policy; Media Policy; 42 C.F.R. Part 2
- Supercedes: N/A