

Confidentiality and Sharing of Social Services Information



UNC
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Competing objectives



Confidentiality

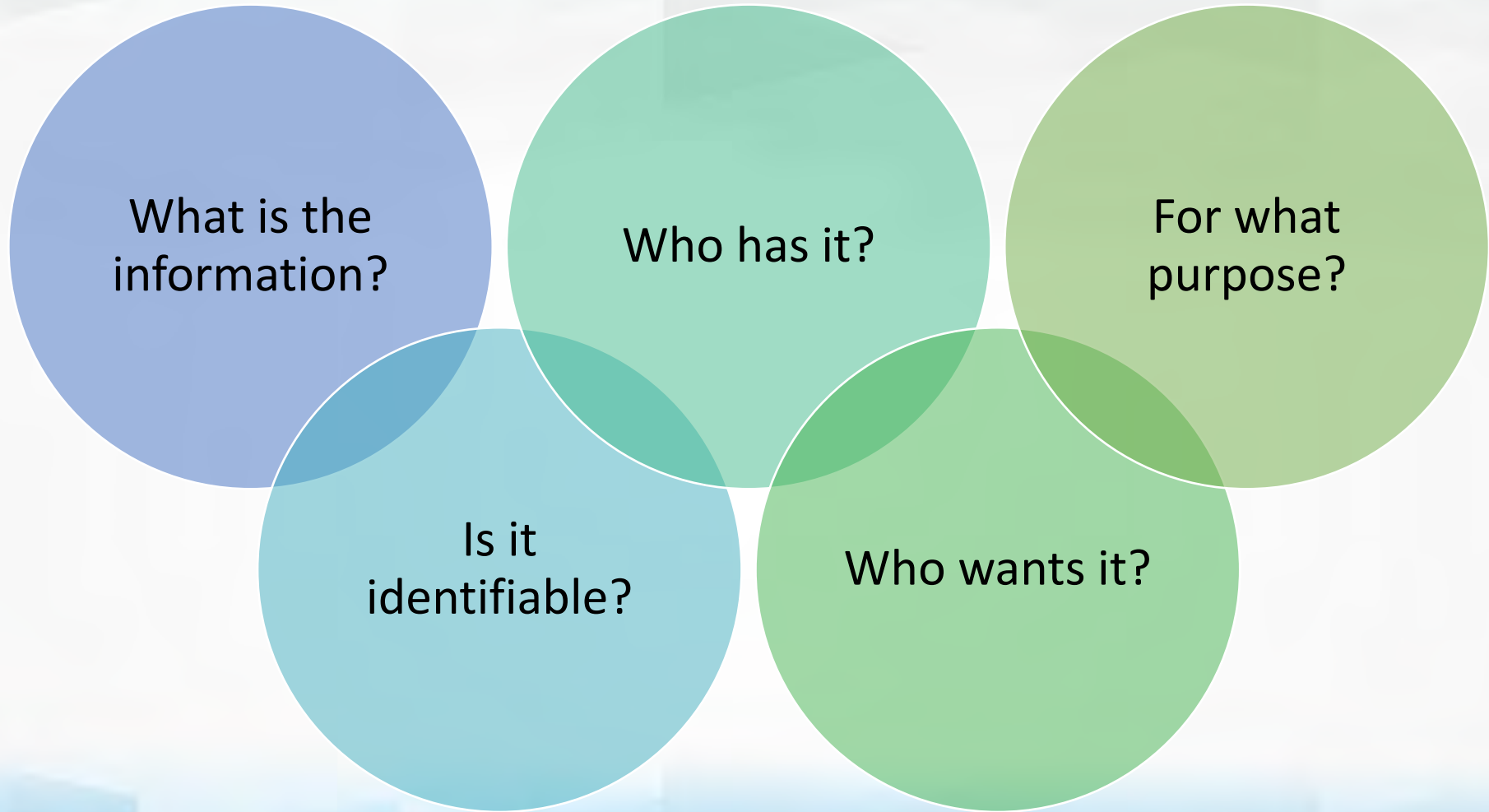


Information
Sharing



Which one is more
important?

When Can You Share Information?



When Can You Share Information?

- Confidentiality is never absolute
 - Look to statutes and regulations for exceptions
 - Some confidentiality laws are more restrictive than others



Types of exceptions:

- With subject's consent
- Pursuant to court order
- To protect others
- For purposes of program administration
- Subject of information not identified

State and Federal Laws Involved

State

1. Foundation - G.S. 108A-80 and 10A NCAC Ch. 69

- Applies social services and public assistance programs

2. Program-specific laws

- CPS: G.S. Chapter 7B, 10A NCAC Chapter 70
- APS: 10A NCAC Subchapter 71A
- Medicaid: 10A NCAC Subchapter 23H, Child support enforcement: G.S. 110-139

3. Laws not specific to social services

- MH/DD/SA Facilities: G.S. 122C-51 to -56; 10A NCAC Subchapter 26B.
- Communicable Diseases: G.S. 130A-143.

Federal

1. Program-associated requirements (Medicaid, FNS, Work First, Title IV)

2. Re-disclosure requirements when other agencies and organizations provide information to DSS (e.g., substance abuse treatment information, education records)

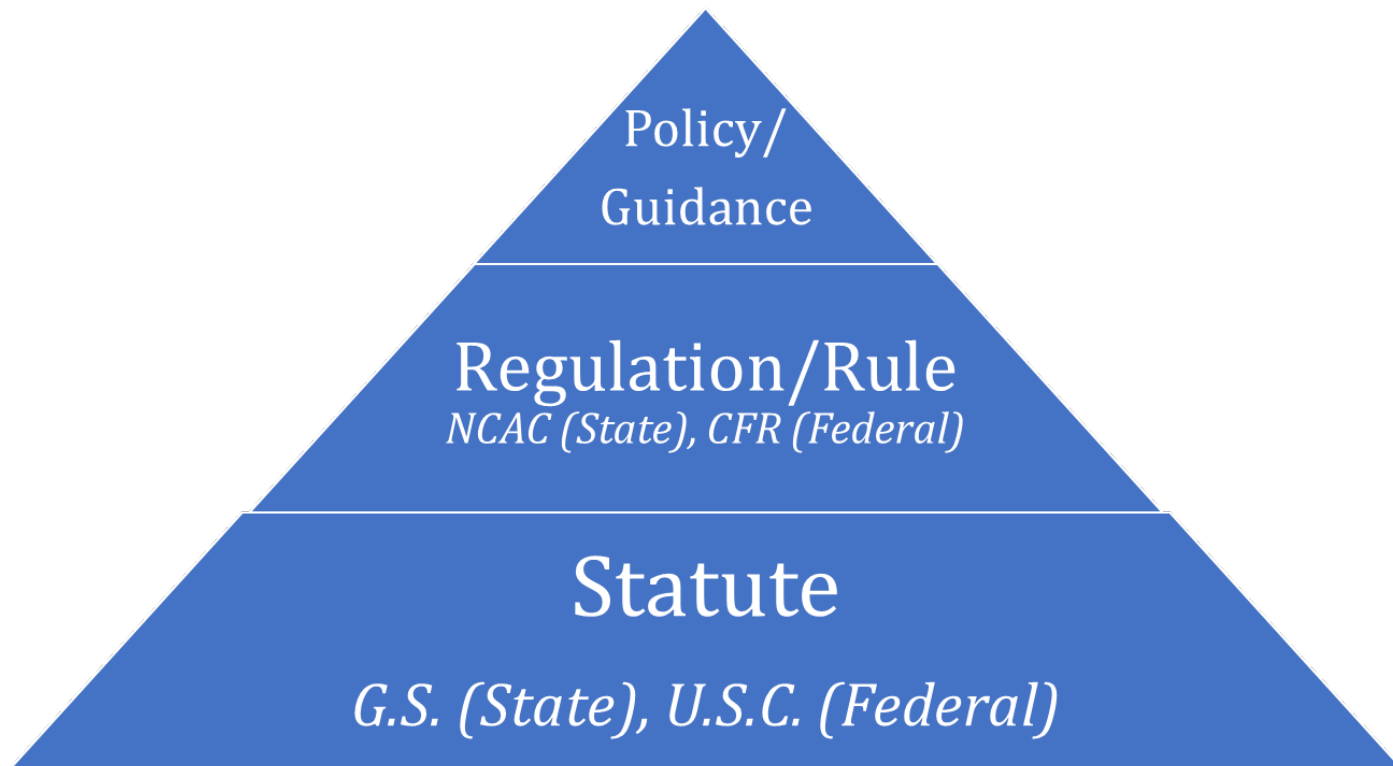
3. Other federal requirements associated with certain information (HIPAA, Internal Revenue Code)

How Do the Laws Interact?

- **Disclosure prohibited under federal law** -- DSS should not disclose information, even if allowed by state law.
- **Disclosure allowed by federal law but prohibited by state law** -- DSS should not disclose information, even if allowed by federal law.
 - **Disclosure required by federal law** – DSS must disclose information, even if state law prohibits disclosure.

FEDERAL LAW	STATE LAW	RESULT
Disclosure Allowed	Disclosure Allowed	DSS <i>Can</i> Disclose
Disclosure Allowed	Disclosure Prohibited	DSS Cannot Disclose
Disclosure Prohibited	Disclosure Allowed	DSS Cannot Disclose
Disclosure Prohibited	Disclosure Required	DSS Cannot Disclose
Disclosure Required	Disclosure Prohibited	DSS <i>Must</i> Disclose

How Do the Laws Interact?



Disclosures of Information

External Disclosures:

- To DSS in a different county
- Law enforcement
- Another government agency
- Client who received services from DSS

Internal Disclosures:

- **May occur when DSS staff share information across programs or between units or internal departments within the DSS.**
 - Income maintenance staff want to review information about a family receiving child welfare services to assess potential benefits fraud.
 - CPS want information from APS for purposes of determining a case plan for a parent and child.
 - APS staff want information from income maintenance staff to ensure that proper economic services are being provided to a vulnerable older adult.



Information Sharing Permitted by Federal Law



- Rule of thumb: Must look for an explicit **exception** to confidentiality requirements in the law
- Different program/funding related laws will have different exceptions
- Some laws limit re-disclosure of documents from external sources (e.g., FERPA, 42 CFR Part 2)

Internal Information Sharing Permitted by Federal Law

- **Title IV-A, -B, -D, -E:** For purposes of program administration related to any of those programs and certain other federally funded needs-based assistance programs, subject to the limitation on disclosing FTI.
- **CAPTA:** As permitted by state law, or for purposes of carrying out legal responsibilities to protect children from child abuse and neglect. In North Carolina, this includes internal sharing of information to other DSS employees for purposes of referrals, supervision, consultation, or determination of eligibility.
- **SNAP:** May be shared internally for purposes of administering other Federal assistance programs or federally assisted State programs providing means-based assistance, the Title IV-D child support program, or any other programs required to participate in IEVS (if useful in establishing or verifying eligibility or benefit amounts).
- **Medicaid and Health Choice:** May only be shared internally in connection with the administration of those programs, with the exception of some permitted disclosures of income and eligibility information for purposes of verifying eligibility for certain other federally funded programs.
- **Child Care Subsidy:** Subject to limitations on disclosing FTI, information about children and families receiving CCDF assistance and child-care providers receiving CCDF funds may be shared internally for purposes of administering or enforcing CCDF or other Federal, State, or local programs.

Federal Tax Information

- DSS is permitted to obtain FTI under various disclosure authorities in the Internal Revenue Code.
- FTI may not be shared across programs.
- FTI may only be used for:
 - (1) establishing and collecting child support obligations from, and locating, individuals owing such obligations, or
 - (2) determining eligibility for, or the correct amount of, benefits under TANF (Work First), Medicaid, SNAP, and certain veterans' benefits programs.
- DSS is generally not permitted to disclose FTI to contractors, except for limited disclosure of certain FTI to contractors for child support enforcement purposes.

The image shows a 2020 U.S. Individual Income Tax Return (Form 1040) from the Department of the Treasury—Internal Revenue Service. The form is for the year 2020 and includes the following sections:

- Filing Status:** Single, Married filing jointly, Married filing separately (MFS), Head of household.
- Personal Information:** Your first name and middle initial, Last name, Home address, City, town, or post office, State, ZIP code, Foreign country name, Foreign province/state/county, Foreign post office.
- Standard Deduction:** Someone can claim: You as a dependent, Your spouse as a dependent, Spouse itemizes on a separate return or you were a dual-status alien.
- Age/Blindness:** You: Were born before January 2, 1956, Are blind, Spouse.
- Dependents:** (1) First name, Last name, (2) Social Security number.
- Income:** 1 Wages, salaries, tips, etc. Attach Form(s) W-2; 2a Tax-exempt interest; 3a Qualified dividends; 4a IRA distributions; 5a Pensions and annuities; 6a Social security benefits; 7 Capital gain or (loss); 8 Other income from Schedule 1, line 9; 9 Add lines 1, 2b, 3b, 4b, 5b, 6b, 7, and 8. This is your total income.
- Adjustments to income:** a From Schedule 1, line 22; b Charitable contributions if you take the standard deduction; c Add lines 10a and 10b. These are your total adjustments to income.
- Adjusted Gross Income:** 11 Subtract line 10c from line 9. This is your adjusted gross income.
- Standard Deduction:** 12 Standard deduction or itemized deductions (from Schedule A).
- Qualified Business Income:** 13 Qualified business income deduction. Attach Form 8995 or Form 8997.
- Taxable Income:** 14 Add lines 12 and 13; 15 Taxable income. Subtract line 14 from line 11. If zero or less, enter -0-

A smartphone in the foreground shows a calculator app with the number 1,000 displayed on the screen.

External Information Sharing Permitted by Federal Law

Example: SNAP Information Can be Shared...

- For administration of SNAP, Title IV-D (child support), and many other federally funded or federally assisted programs (providing services, determining eligibility, etc), including the National School Lunch Program
- For administration or enforcement of programs which are required to participate in the State income and eligibility verification system
- For verification of immigration status of aliens applying for SNAP benefits, through the Systematic Alien Verification for Entitlements (SAVE) Program
- With law enforcement officials, upon their written request, for the purpose of **investigating an alleged violation of the Food and Nutrition Act**. Request must include the identity of the individual requesting the information and his authority to do so, violation being investigated, and the identity of the person on whom the information is requested.
- With law enforcement officials, upon written request that includes the name of the household member being sought, for the purpose of obtaining the address, social security number, and, if available, photograph of the household member, **if the member is fleeing to avoid prosecution or custody for a crime, or an attempt to commit a crime**, that would be classified as a **felony, or is violating a condition of probation or parole** imposed under a Federal or State law.

State Laws

Broad Protection for all Social Services Information:

- G.S. 108A-80 and 10A NCAC Chapter 69 broadly apply to all social services information, including economic, child protective, and adult protective services information.

Specific CPS and APS Limitations:

- North Carolina law contains additional statutes and regulations specific to the confidentiality of information pertaining to CPS and APS.

Information-Specific Limitations:

- Other North Carolina laws governing confidentiality that are not specific to social services may also apply to a DSS (mental health, communicable disease, etc).

General: All Social Services

Cornerstone – G.S. 108A-80 + 10A NCAC Ch. 69

- Applies to ALL social services and public assistance programs
- **Sets a floor, not a ceiling**

“...It shall be unlawful for any person to obtain, disclose or use, or to authorize, permit, or acquiesce in the use of any list of names or **other information concerning persons applying for or receiving public assistance or social services** that may be directly or indirectly derived from the records, files or communications of the Department or the county boards of social services, or county departments of social services or acquired in the course of performing official duties **except for the purposes directly connected with the administration of the programs of public assistance and social services** in accordance with federal law, rules and regulations, and the rules of the Social Services Commission or the Department.”

General: All Social Services

- Cornerstone – **G.S. 108A-80 + 10A NCAC Ch. 69**
- Information may be disclosed only if “directly connected to administration” of programs
- Implementing regulations (10A NCAC Ch. 69) authorize broader information sharing
 - Client consent
 - Research
 - Accountability
 - Court order
 - To comply with other laws



General: All Social Services

If a more stringent state law protection for specific categories of information applies—the exceptions allowed by the regulations in **10A NCAC Ch. 69** (for example, disclosures for research purposes) do not necessarily apply.

These exceptions must be read **in tandem with the stricter requirements** to determine what is allowed.



Specific: CPS

Threshold for protection of CPS info: G.S. 7B-302(a1)



- All information received by DSS, including the identity of the reporter, shall be held in *strictest confidence* by the department, except
 - to any federal, State, or local government entity or its agent “in order to protect a juvenile from abuse or neglect.”
 - Court order
 - Child or GAL
 - Parties to a juvenile CPS proceeding
 - For purposes of consulting with any public or private agencies or individuals in performing any duties related to the assessment of the report or the provision or arrangement for protective services.
- Applies as soon as DSS receives a report of abuse, neglect, or dependency.

Specific: CPS

New addition to the law: G.S. § 7B-302(a3)

- Any individual member of the General Assembly or joint legislative oversight committee of the General Assembly may request access to confidential information and records necessary for oversight of programs related to child protective services *except those protected by federal law, including state plan requirements within federal programs.*
- **NC DHHS policy:** County agency must contact their Regional Child Welfare Consultant who will coordinate with persons within DHHS.
- **Coates Canons Blog:** The Impact of S.L. 2021-132 on the Confidentiality of Child Protective Services Information and Records

Specific: CPS

Protective Services or Custody: 10A NCAC 70A .0113

Once DSS initiates protective services for a child or a child is placed in DSS custody by a court, an even more stringent standard applies to any information “in the protective services case record.”



- DSS must not allow anyone outside of DSS (other than state and federal agency personnel carrying out their lawful responsibilities for program audit and review) to examine a protective services case record unless:
 - (1) the judge orders the county director to allow examination; or
 - (2) the child or the child's attorney requests to examine the child's own record.
- 10A NCAC 70A .0113 allows the county director to share information and a summary of documentation from the case record *without* a court order “**with public or private agencies or individuals that are being utilized to provide or facilitate the provision of protective services to a child.**”

Specific: CPS

Information Sharing With Other Agencies – G.S. 7B-3100

- G.S. 7B-3100 allows “designated agencies” to share information that is in their possession “that is *relevant to any assessment of a report of child abuse, neglect, or dependency or the provision or arrangement of protective services in a child abuse, neglect, or dependency case...or to any case in which a petition is filed alleging that a juvenile is abused, neglected, dependent, undisciplined, or delinquent or any case in which a vulnerable juvenile is receiving juvenile consultation services.*”
- The agencies authorized to share information pursuant to G.S. 7B-3100 and 14B NCAC 11A .0301 are:
 - The Juvenile Justice Section of the Division of Adult Correction and Juvenile Justice of the Department of Public Safety;
 - The Section of Community Corrections of the Division of Adult Correction and Juvenile Justice of the Department of Public Safety (under certain conditions);
 - The Office of Guardian Ad Litem Services of the Administrative Office of the Courts;
 - County Departments of Social Services;
 - Area mental health developmental disability and substance abuse authorities;
 - Local law enforcement agencies;
 - District attorneys' offices as authorized by G.S. 7B-3100;
 - County mental health facilities, developmental disabilities and substance abuse programs;
 - Local school administrative units;
 - Local health departments; and
 - A local agency designated by an administrative order issued by the chief district court judge of the district court district in which the agency is located.

Specific: CPS

Information Sharing With Other Agencies – G.S. 7B-3100

1. Information sharing should be limited to what is necessary for “assessment of a report” and/or “provision or arrangement of protective services” and/or to a case in which a petition is filed
2. Information shared must be used for “protection of the juvenile or others” or to “improve juvenile’s educational opportunities.”



Specific: APS

Heightened protection:

- 1. Information about the identity of the reporter (or anyone who provides information to DSS in the course of an APS investigation) may only be disclosed:**
 - By court order
 - To the Division of Health Service Regulation to carry out an investigation
 - To the district attorney's office or law enforcement officials involved with a criminal investigation of alleged abuse, neglect, or exploitation of a disabled adult.
- 2. Any "specific findings" included in DSS's evaluation report, when evaluating any report of abuse, neglect, or exploitation may only be disclosed:**
 - Pursuant to the disabled adult's authorization;
 - By court order
 - As necessary to provide protective services;
 - To the district attorney or law enforcement agencies upon request, but only if evidence of abuse, neglect, or exploitation is found;
 - To law enforcement agencies when the results of the protective services evaluation indicate violations of other laws enforced by those agencies; or
 - To NCDHHS when a county DSS has substantiated a report of abuse, neglect, or exploitation.
- 3. Any copies of a disabled adult or older adult's financial records.**
 - These records may only be disclosed pursuant to court order.

Reading State Laws Together

- How do these more specific CPS and APS confidentiality requirements relate to the exceptions for disclosure in 10A NCAC Ch. 69, which authorize broader information sharing?
 - Client consent, program administration, research, accountability, court order, to comply with other laws

Example: 10A NCAC 69 .0501 and 10A NCAC 69 .0503 allow internal sharing of confidential social services information for purposes of making referrals, providing supervision and consultation, determining eligibility for services or programs, or facilitating program administration.

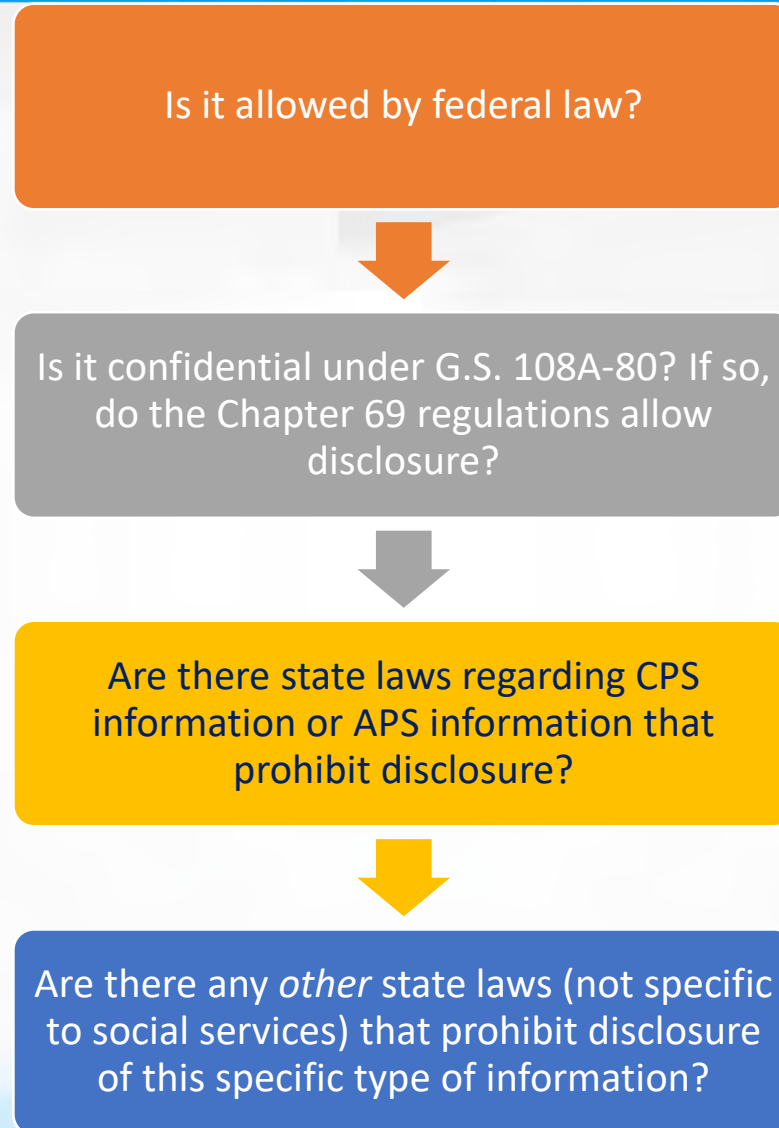
Does this include CPS information?

Reading State Laws Together

Cautious interpretation: Chapter 69 regulations do not authorize disclosure of CPS information (or certain APS information) where such disclosures are not explicitly permitted by the statutes and regulations that give this information heightened confidentiality protection.

- **Example:** 10A NCAC 69 .0503 allows social services information to be shared within a DSS for purposes of “facilitating the administration of other state and federal programs,” but G.S. 7B-302(a1) has no such exception for the disclosure of CPS information.

Putting the Pieces Together



Other Confidentiality Issues



Board Member Access

- G.S. 108A-11 specifically grants the DSS board access to all social services records.
- However, 1995 North Carolina Attorney General's opinion concluded that this right of access does not include CPS case files.



“Although juvenile cases are in a general sense considered to be within the ambit of social services and G.S. §108A-80, G.S. §7A-675(c) provides very specific protection regarding confidentiality. Therefore, social services board members do not have access to juvenile case files because those files are governed by Chapter 7A.”

Public Records

- Any record made or received in the transaction of public business is subject to public access **unless an exception applies.**
- Two types of exceptions:
 - *May release*, but not required to when the law says “not public records”
 - *Shall not release* when the law says “confidential”
- Look back to G.S. 108A-80: Is the information requested “concerning persons applying for or receiving public assistance or social services?”



Does the record exist?

Is it made or received in the transaction of public business?

Is there an exception that applies?

Does the exception apply to the whole record, or just a part of it?

Personnel Records

G.S. 153A-98 - Privacy of employee personnel records

- All information contained in a county employee's personnel file, other than the information made public by the statute, is confidential.
- Open to inspection only in limited instances described in the statute.



G.S. 153A-98(b) – lists categories of information about an employee that are a matter of public record

Hypothetical Scenarios

Scenario 1:

- The mom of a child who was temporarily in DSS custody is upset about DSS's handling of the case.
- Mom is interviewed by a reporter.
- The reporter plans to publish an article containing several inaccurate statements about the child's case that cast a very negative light on DSS.
- The reporter contacts DSS to verify the mom's allegations and says he wants to give DSS a chance to "set the record straight" and "tell its side of the story."
- Can DSS provide the reporter with information?

Scenario 1: Discussion

Look to G.S. 7B-302(a1)—no exceptions that would allow disclosure of CPS information to the media

Keep in mind—this answer might be different if a child fatality or near fatality was involved

- G.S. 7B-2903(b): Must disclose to the public the findings and information related to a child fatality or near fatality upon request if:
 - A person is criminally charged with having caused the child fatality or near fatality; or
 - The district attorney has certified that a person would be charged with having caused the child fatality or near fatality but for that person's prior death.

Scenario 2:

- DSS receives a call from a CPS social worker in Tennessee. Chad Smith recently moved there from NC with his 4-year-old daughter. CPS in Tennessee has received a report of abuse related to his daughter.
- DSS has a lengthy protective services record related to Mr. Smith and his 10-year-old son, who still lives in NC with his mother.
- May DSS share information with the CPS staff in Tennessee?

Scenario 2: Discussion

Exception to G.S. 7B-302(a1): “The department shall disclose confidential information to any federal, State, or local government entity or its agent...in order to protect a juvenile from abuse or neglect.”

Exception to 10A NCAC 70A .0113 (protective services record): DSS may share information and a summary of documentation from the case record without a court order “with public or private agencies or individuals that are being utilized to provide or facilitate the provision of protective services to *a child.*”

Scenario 3:

- APS staff are investigating a case involving suspected abuse and financial exploitation of Cindy, an adult with a disability.
- As part of the investigation, DSS petitions the district court to issue a subpoena directing Cindy's bank to provide Cindy's financial records to DSS. The bank complies and provides DSS with the financial records.
- Later, Income Maintenance staff (in the same DSS) ask APS staff for access to those same financial records for purposes of determining Cindy's eligibility for SNAP benefits. May APS staff share the financial records internally without Cindy's consent?

Scenario 3: Discussion

State Law Generally Applicable to All Social Services Information – Chapter 69 regulations:

10A NCAC 69 .0501(b) allows DSS staff to share confidential information “from the service record” internally as necessary to make referrals, provide supervision and consultation, or determine eligibility for services or programs.

BUT...

Other State Law is More Protective:

G.S. 108A-116(d) -- financial records obtained from a disabled adult’s bank by DSS in the course of investigating suspected financial exploitation can only be disclosed pursuant to a **court order**.

Scenario 4:

- A member of the DSS board has a sister whose family was recently involved with CPS. The sister's family also receives public assistance.
- The DSS board member asks the director to provide copies of CPS and public assistance records related to the board member's sister's family.
- What should the DSS director do?

Scenario 4: Discussion

CPS Information:

- G.S. 108A-11 specifically grants the DSS board access to all social services records
- **BUT** G.S. 7B-302(a1) says all CPS information must be “held in strictest confidence” and 1995 North Carolina Attorney General’s opinion concluded that the board’s right of access does not include CPS case files.

Public Assistance Information:

- Look to federal law concerning specific program (SNAP, Medicaid, Work First, etc)
- Is this for purposes of “program administration”?

Scenario 5:

- Miriam goes to DSS to apply for SNAP/FNS benefits for herself and her four year-old son, Sam. While gathering information from Miriam to determine SNAP/FNS eligibility, the Income Maintenance caseworker learns that Sam's biological father is living in a different home and is not paying child support.
- Can the caseworker provide information about Miriam and Sam to the Child Support Services (Title IV-D) Division within the DSS where she works?

Scenario 5: Discussion

Federal Law

- 7 C.F.R. 272.1(c)(iv) - Information obtained from SNAP applicant households may be disclosed to persons directly connected with the administration of the Child Support Program under Title IV-D.

State Law Generally Applicable to All Social Services Information (G.S. 108A-80 and Chapter 69 regulations)

- 10A NCAC 69 .0501(b) allows DSS staff to share confidential information “from the public assistance record” to make referrals, provide supervision and consultation, or determine eligibility for services or programs.

Other State Laws Outside of G.S. 108A-80 and the Chapter 69 regulations

- No involvement with CPS, so heightened confidentiality protections for CPS information found in Chapter 7B are not applicable.
- No involvement with APS, so the heightened confidentiality protections for APS information are not applicable.
- No other confidentiality laws triggered (mental health, communicable disease information, etc).

Scenario 6:

- An APS report was filed regarding an elderly adult, Angela. DSS became involved in providing protective services to Angela.
- Angela's son, David, is upset about APS involvement and feels that one of the social workers working with Angela has been negligent in her handling of the case.
- David contacts the DSS director and asks for the social worker's history of promotions or demotions during her time at DSS, as well as information about any disciplinary actions against her. How should the director respond?

Scenario 6: Discussion

Look to county personnel record statute

- G.S. 153A-98 deals with privacy of county employee personnel records.
- G.S. 153A-98(b) names specific categories of information that are a matter of public record (including date and type of each promotion, demotion, or other change in position classification, and date and type of each dismissal, suspension, or demotion for disciplinary reasons)

Questions?

