

**Child and Family Services Policy Manual: Confidentiality, HIPAA, and Case Records Background Checks on Applicants, Employees or Volunteers**

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<p>Authority to Request CPS Information for Employment or Volunteer Work</p>	<p>Mont. Code Ann. § 41-3-205 authorizes a person or entity carrying out background, employment related or volunteer related screening of current or prospective employees or volunteers to request child protective services information from the Department regarding applicants, employees or volunteers who have or who may have unsupervised contact with children through employment or volunteer activities.</p>
<p><b>Conditions the Requestor Must Meet</b> Release of Information</p>	<p>The person or entity requesting a CPS check must have hiring authority or approval authority of the applicant, employee or volunteer or must be acting on behalf of an agency with such authority;</p> <p>The person or entity requesting information must properly identify the applicant, employee or volunteer; by submitting a completed department release of information form to the Background Check unit in the CFSD central office. The release must include the name of the person or entity to whom the results may be released and the release must be signed by the applicant and the signature notarized.</p>
<p><b>Response by Background Check Unit</b></p>	<p>The Background Check staff will respond to the request in as timely a manner as possible and will:</p> <ul style="list-style-type: none"> <li>• Determine if the release of information form is properly completed;</li> <li>• Utilize the information provided on the release of information to determine if;             <ol style="list-style-type: none"> <li>1. the person has a CAPS ID number; and</li> <li>2. the person has any CPS history in CAPS including one or more substantiations of abuse or neglect of a child; and/or</li> <li>3. a child in the person's care has been adjudicated by a court as a youth in need of care; and/or</li> <li>4. the person has had caregiver rights to a child involuntarily terminated; and/or</li> <li>5. a child in the person's care has involuntarily been placed in foster care; and/or</li> </ol> </li> </ul>

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6. other information located during the CPS background check indicates the person poses a risk to children.

- if the person does not have any history that indicates a risk to children as determined by the department, a letter will be sent to the requestor stating that as of the date of the report the person does not pose a risk to children.
- If a CPS substantiation is found, a determination will be made if a letter of notification was sent to the person as required in Section 202-4, Documentation of Investigation.
- If the person is an alleged perpetrator and is in the appeal process at the time of the request, no information regarding the alleged child abuse/neglect may be released until the case has been heard by a Hearings Officer and an opinion rendered.

If a determination is made that the person poses a risk based on information located while conducting the CPS check, a letter will be mailed to the requestor stating that the person poses a risk to children.

### **Letter of Response to the Requestor**

The letter to the requestor regarding a person for whom information regarding a CPS record is being provided must contain the following information:

- Name and birthdate of the person about whom the information has been requested;
- statute citation authorizing release of information [Mont. Code Ann. § 41-3-205(3)(o)]; and
- If the person poses a risk to children, the name and telephone number of the supervisor the person may contact for additional information.

The results letter must be signed by a background check staff person. The original letter is mailed in an envelope stamped "Confidential" or may be faxed to the requestor.

### **Persons Who Do Not Pose a Risk**

A copy of the letter, along with the release of information and any other related documentation will be stored for 90 days, at which time it may be shredded.

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<b>Persons Who Pose A Risk</b>	The letter must be signed by the background unit supervisor. The original letter must be mailed to the requestor in an envelope stamped "Confidential". A copy of the letter release of information and any other related documentation is saved and stored following the retention policy for CPS Case Records found in policy 505-1 Confidentiality, Case Records, and HIPAA Record Retention/Destruction
<b>Immunity from Civil Liability</b>	Mont. Code Ann. § 41-3-203 states that a person who provides information pursuant to 41-3-201 that is substantiated by the department, or a person who uses information, received pursuant to 41-3-205 that is substantiated by the department to refuse to hire or to discharge a prospective or current employee, volunteer or other person who through employment or volunteer activities may have unsupervised contact with children is immune from civil liability unless the person reporting or using the information acts in bad faith or with malicious purpose.
<b>References</b>	<p>Mont. Code Ann. § 41-3-203</p> <p>Mont. Code Ann. § 41-3-205</p> <p>Mont. Code Ann. § 42-3-203</p> <p>Mont. Code Ann. § 52-2-622</p>

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