

6 Tips for Navigating Confidentiality When Gathering and Disseminating Information

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CASA volunteers frequently come to me with questions regarding what information they can collect about a child and with whom they can share that information. This is a much more complicated issue than it may appear; many overlapping (and sometimes conflicting) state and federal laws are involved. These tips are intended to guide you but are not a substitute for talking with your CASA/GAL program supervisor about your case.

1. Learn as much as you can about the child from every possible source.

The information a CASA volunteer is entitled to gather about a child varies from state to state. Generally, CASA volunteers have broad rights to information about the child. This usually starts with *all* of the information available to the child welfare authorities on the case. State law may authorize you to gather records that are otherwise usually kept private: educational, medical, mental health and law enforcement or judicial records regarding the child. Medical and mental health records are often the hardest to obtain. Many courts use an order to assign a CASA volunteer that includes statutory language defining what information the volunteer has access to.

Practice tip: Become informed about what information you are allowed to gather in your state and be firm about asking for it. If the order appointing you to a case is specific as to what information you can access, bring it along when you want to review records.

2. Learn as much as you can about the parents too.

When you start your investigation, think about what documents and records might be useful. In most states, the child welfare agency should let you read or give you a copy of their file on the parents.

A parent's medical information is so private that it should not be collected unless there is reason to do so. The court will normally require evidence showing that something about the parent's medical condition affects parenting ability before ordering the release of such information. The court may well limit what records you are allowed to see. Access is heavily regulated by both state law and the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Parents' mental health records are also heavily protected—both by HIPAA and physician/patient privilege. Similarly, substance abuse treatment records can be obtained only if the substance-abuse problem relates to the parenting concerns. To ensure continued access to health care records and avoid potential objections by covered entities, CASA and GAL programs should request that the wording of any court order appointing volunteers expressly authorizes access to "protected health information."

Many adult criminal records are public records and generally available. Juvenile criminal history about the parents can be difficult to obtain because some states allow juvenile cases to be sealed. Family law records such as divorces, adoptions and paternity filings can be rich sources of information regarding a parent's history. Sometimes these files are sealed, but it can be worth looking.

Practice tip: Think about what kind of records might exist about the parents of the child you are advocating for, and then decide whether those records will shed light on the parenting problems in your case. If certain records seem relevant, consult your program supervisor about how to get them.



3. To strictly maintain confidentiality, memorize an "apology rap."

You must strictly protect the privacy of the child and the parents in your case. Familiarize yourself carefully with the requirements of your program as well as state statutes about confidentiality.

You will learn that many people want to know things about the child you are advocating for. Many times it will seem reasonable and appropriate to give out information, but you as the CASA volunteer still cannot disclose it. Foster parents need information about the child, but it is not your job to supply that information. This is a source of frustration to CASA volunteers, who often meet foster parents who feel they have not been adequately kept in the loop. If the foster parent needs information, you can offer to go to the social worker and ask them to call the foster parent, but you should not disclose anything yourself. Be particularly alert to inadvertently passing information to the foster parent about how the biological parents are doing.

Practice tip: Memorize a phrase you can comfortably repeat to teachers, foster parents and neighbors who genuinely want to know how a child is doing: "I'm so sorry that I can't give you that information. I can see that you need it. Please speak to the social worker about this."

4. Be aware of safety issues that are also confidentiality issues.

Many laws about confidentiality and privacy exist to protect children from harm. Because our cases can involve dangerous or criminal behavior, names and addresses of foster parents and the children's schools should never be disclosed in order to keep the child and caregivers safe. If domestic violence is an issue, be scrupulous in maintaining the privacy of the victim's location.

5. Be aware that you can be compelled to share the information you gather.

Through the discovery process, you are very likely to have a continuing obligation to share the documents and information you gather with the other parties to the case. If you are testifying, you can be compelled to turn over anything that you rely on to refresh your recollection. The best practice is to testify from memory as much as possible—or base your recollection on your formal court report. Another area of compulsory disclosure has to do

with new referrals of suspected abuse. In many states, CASA volunteers are mandatory reporters of child abuse. Discuss with your program supervisor major developments in your case so that they can help you decide whether you need to make a referral to child protection authorities.

Practice tip: Before you take a document from anyone, make sure they understand that you may be required to share it with the other parties and the court. You cannot keep anything a foster parent writes to you, for example, secret from the other parties. *Do not turn over discovery or documents to other parties yourself! Discuss with your program supervisor when and how the document should be distributed.* Many documents you collect, especially confidential records, have laws affecting the manner in which they are turned over.

6. Be careful about throwing things away.

You cannot throw anything away that could be discoverable or subpoenaed

by the other parties; think about the Enron and Arthur Andersen document shredding fiasco! Even when it is appropriate to dispose of documents, you need to be careful about *how* you dispose of them. To avoid inadvertently disclosing information, take materials back to your program for disposal. When a case is dismissed, make certain that your files get back to the program. Your trash or recycling bin does not meet confidentiality requirements. National CASA Association standards require that a local program have written operational procedures consistent with legal requirements and with the policy on confidential information governing the retention, maintenance, protection, destruction and return of case files when the case is closed.

Practice tip: Deleting email on your case can be just as problematic as throwing away documents. Consult with your program supervisor about email policies. 🗑️

A 30th Anniversary Reflection

When I first read the beautiful 30th Anniversary issue of *The Connection* this past spring, I found myself flooded with memories of dear friends and inspired by all the people across the nation advocating for our children in 2007.

In the beginning, we were probably a bit naïve about the development of a viable organization. But we were determined to achieve success. Luckily, we began with a goal: that children are placed out-of-home only when necessary, that they are placed appropriately and that they are provided quality care. We were also resolute that cases be reviewed by the court at least every six months and that permanent families be provided in a timely fashion.

There was so much to learn and to do, but it seems nothing now in comparison to what has developed so successfully during the past 30 years! I truly and personally thank each and every one of you for your many contributions.

—Carmen Ray Bettineski
First Director of the King County Dependency CASA Program and of the National CASA Association



Carmen Ray Bettineski, surrounded by her five grandchildren