

Understanding the Laws, Rules, and Regulations Regarding Client Confidentiality and Access to Information:

An Examination of the Systems Involved in a Coordinated Community Response to Domestic Violence

The following chart was prepared by the State University of New York at Buffalo School of Law Family Violence Clinic. As a clinic student, Amy Schwartz (now of Greater Upstate Law Project) originally researched and prepared this chart in 1999. In 2002, two University of Buffalo Family Violence Clinic students, Christi Caratozzolo and Gretchen Kabza updated this document.

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AGENCY- Law Enforcement	RELEVANT STATUTES	PUBLIC RECORD	NOTES
911 tapes and computer assisted dispatch records		No	Only available under judicial subpoena. Much of this is governed by §87 of the Public Officer's Law; see also 9 New York Code Rules Regulations §6150 (Availability of Public Records)
Police Incident Report	see Public Officer's Law §87(2)(e)	Generally Yes.	Yes unless it interferes with an investigation or prosecution by the authorities. See <u>Matter of Allen v. Srojnowski</u> , 129 AD2d 700; <u>Matter of Radio City Music Hall Prods.</u> , 121 AD2d 230; and <u>Matter of Sheehan v. City of Binghamton</u> , 59 AD2d 808.
Accident Reports	Public Officer's Law §66-a	Generally Yes.	Yes unless it interferes with an investigation or prosecution by the authorities.
Disposition of Charges	Criminal Procedure Law §160.50	Depends on verdict.	Disposition is a matter of public record if it is a conviction. However, acquittals, dismissals and adjournments in contemplation of dismissal are not public records. See Criminal Procedure Law §160.50(3) for a complete list of what is considered termination in favor of accused.
Police Activity Logs, Memo Books	Public Officer's Law §86(3) & (4)	Yes.	According to <u>Gould v. NYCPD</u> , police activity logs and memo books are "records" kept by an "agency" and are therefore available under FOIL (Freedom Of Information Law). 653 NYS2d 54. However, if disclosure of such records would interfere with judicial proceedings or law enforcement investigations, the records will be exempt from disclosure. See <u>Pittari v. Pirro</u> , 683 NYS2d 700; Public Officer's Law §87(2)(e)(iv).

PROSECUTOR	RELEVANT STATUTES	PUBLIC RECORD	NOTES
Defense Counsel's Notes	CPL §240.45	Generally No.	Prosecution is entitled to any statements of prospective witnesses, with the exception of the defendant. Any notes including substance of those interviews must be disclosed. <u>People v. Allen</u> , 104 Misc.2d 136.
Prosecutor's Notes	See CPL §240.20; CPL §240.45	Generally No.	Under Rosario, the defense is entitled to prosecutor's notes if they are summaries of witness statements. See: <u>People v. Jackson</u> , 154 Misc.2d 718. However, if they reveal the prosecution's opinions or strategy on the case they are protected under work product.
Charges filed and disposition	CPL §160.50	Depends on verdict	If Defendant is convicted, these are matters of public record. However, if defendant is not convicted, the records are not available to the public. (See statute for complete list)
Grand Jury Proceedings	Penal Law §215.70 Also see CPL §160.50	No.	Unlawful disclosure is a Class E Felony. The ultimate decision of the grand jury is a matter of public record. See: <u>In re David</u> , 136 Misc.2d 863; NY Family Court Act §164; Civil Procedure Law & Rules §4511. If the proceedings end in favor of the accused, the records will be sealed and are not available to the public.

JUDICIARY	RELEVANT STATUTES	PUBLIC RECORD	NOTES
Family Court <u>Records</u>	Family Court Act §166 22 NYCRR §205.5	No, but it is in the discretion of the court to allow inspection No, but says who is permitted access to pleadings, legal papers, minutes and under what circumstances	Any duly authorized agency, association, society or institution to which a child is committed may cause an inspection of the record of investigation to be had and may in the discretion of the court obtain a copy of the whole or part of such record.
Family Court <u>Proceedings</u>	22 NYCRR §205.4	Yes	Members of the public, including the news media, have access to all courtrooms, lobbies, public waiting areas and other common areas of the Family Court otherwise open to individuals having business before the court. The judge has the discretion to exclude the general public or any person. This is determined on a case by case basis.
Criminal Court <u>Records</u>	CPL §160.50	Depends on Verdict	Upon termination of proceeding in favor of the accused, the criminal court record shall be sealed pursuant to Criminal Procedure Law §160.50(1).

JUDICIARY (Continued)	RELEVANT STATUTES	PUBLIC RECORDS	NOTES
Mediation and Dispute Resolution Centers	Judiciary Law §849-b(6)	No.	All memoranda, work products, or case files of a mediator are confidential and not subject to disclosure in any judicial or administrative proceeding. Any communication relating to the subject matter of the resolution made during the resolution process by any participant, mediator, or any other person present at the dispute resolution shall be a confidential communication.
Docket Books and Dockets	Public Officer's Law §66-a; Judiciary Law §255-b	Yes.	See: <u>Werfel v. Fitzgerald</u> , 23 AD2d 306. Note: Many court watching groups (such as MADD) utilize dockets to monitor cases.

PROBATION	RELEVANT STATUTES	PUBLIC RECORD	NOTES
Records of meetings and Social File	9 NYCRR §350.9	Probably Not.	Pursuant to 9 New York Code, Rules & Regulations §350.9, probation reports can be transmitted to both Criminal and Family Courts. Additionally, probation reports are available to professional licensing agencies as well as those authorized by law or court order.
Disposition		Might Be.	See <u>People v. Harrington</u> , 131 Misc.2d 1017, 1020- Mother was sentenced to three years probation. Court comments that this case has been fairly widely publicized and that the public will undoubtedly be made aware of the disposition.
Pre-Sentence Reports	CPL §390.50	Generally No.	May be available to victims (victim impact statements), defense counsel or prosecutor, other courts, professional licensing agencies or to those authorized by law or court order. FOIL does not apply to pre-sentence reports.
Alcohol and Substance Abuse Treatment Reports (compliance reports)	Exec. Law §257(4)(a)	Generally No.	For Compliance: If probationer has terminated or failed to update an alcohol or substance abuse program ordered by the court as a condition of probation, the Probation Officer is to notify the court within 90 days. Records may be released for use in child protective services proceeding. <u>In re Doe Children</u> , 93 Misc. 2d 479.
Conditional Discharge	Penal Law §65.05	No.	Program administrators must report compliance/noncompliance with treatment programs to the court during the period of conditional discharge if so ordered.
Probation records to Child Protective Services	Exec. Law §256-a Social Services Law §413	No.	If a Probation Officer determines records are relevant to an investigation of child abuse/maltreatment, records shall be provided to Child Protective Services. See Social Services Law §413 for a complete list of mandatory reporters.

CORRECTIONAL FACILITIES PAROLE	RELEVANT STATUTES	PUBLIC RECORDS	NOTES
Correctional Facility Record of Commitment and Discharges	Corrections Law §500-f	Yes.	The daily record of the commitment and discharge of all prisoners delivered to a keeper's charge are matters of public record. This only applies to county jails and NOT "correctional facilities" under Department of Correctional Services.
Parole Records	9 NYCRR §8000.5 (c); Exec. Law §259-k	Generally No.	Parole records are confidential, however, access may be granted to the division, board of parole, and authorized officers pursuant to NY Executive Law §259-k. Additionally, an exception is available if the board determines that the records are relevant to an investigation of child abuse/maltreatment by Child Protective Services. Case law states that Parole records remain confidential and FOIL does not apply. See: <u>Robles v. Tracy</u> , 275 AD2d 837(2000). According to 9 NY Code, Rules & Regulations §8000.5, an inmate, releasee, or counsel for either may have access to information contained in the parole case record prior to a scheduled appearance before the board, prior to a scheduled appearance before an authorized hearing officer of the division, or prior to the timely perfecting an administrative appeal of a final decision of the board. Access may be denied to certain portions of the case record. See 9 NYCRR §8000.5 (c)(2)(i)(a-b) for a list of limitations.

CORONER MEDICAL EXAMINER	RELEVANT STATUTES	PUBLIC RECORDS	NOTES
<p>1. Records and reports of autopsies</p> <p>2. Death Certificates</p>	<p>1) NY County Law §677(3)(b) 2) NY Pub Off Law §87 3) NY City Charter §577(g)</p> <p>1) NY Pub Health Law §4100 and §4174 2) NY Pub Off Law §87</p>	<p>No</p> <p>Yes</p>	<p>NY County Law §677: Autopsy reports available under following circumstances: 1) upon application of personal representative; 2) upon proper application of any person who is or may be affected in a civil or criminal action by the contents of the investigation; or 3) upon application of any person having a substantial interest. A court will find substantial interest where there is adequate reason to obtain the report. The court will balance privacy concerns and other factors.</p> <p>The Court has held there is a substantial interest where doctors and medical personnel use records for educational tool and/or in cases to prove one did not commit a crime. <u>Central Hospital</u>, 140 A.D. 2d 113 (1988); and <u>Diaz v. Lukash</u>, 82 N.Y. 2d 211 (1993).</p>

MEDICAL	RELEVANT STATUTES	PUBLIC RECORD	NOTES
1. Hospital Records	1) NY CLS Pub Health Law §2803-c(b), (f). 2) NY CLS Pub Health Law §18 3) NY Pub Off Law §87 and §89.	No	Under NY CLS Pub Health Law §18, a patient can get their own medical records under FOIL (but not if they are a psychiatric patient). <u>Mantica v. NYS Dept of Health</u> , 94 N.Y. 2d 58 (1999). Mother can obtain child's records. <u>Rosen</u> , 163 Misc. 2d 70 (1993).
2. Private Doctor	1) NY CPLR §4504 2) NY CLS Pub Health Law §206(2)	No	-Physician/Patient Privilege. -Need a warrant to obtain.
3. HMO Records.	NY CLS Pub Health Law §4408(2)(e)	No (?)	HMO must let patient know what their confidentiality policy is.
4. Department of Health	1) NY Pub Off Law §96 2) NY CLS Pub Health Law §206	No	NY CLS Pub Health Law §206 states that Department of Health records collected from hospitals and doctors are not open to public access if they are collected under the assumption that the records would be kept confidential.

MENTAL HEALTH	RELEVANT STATUTES	PUBLIC RECORD	NOTES
1. Community Clinic	1) Mental Hygiene Law §31.11, §33.13 and §33.16 2) 14 NYCRR §603.8	No	<p>Mental Hygiene Law §33.13 covers clinical records maintained at facilities licensed or operated by the Office of Mental Health or the Office of Mental Retardation and Developmental Disabilities.</p> <p>This can be released with consent of the commissioner to “qualified researchers” or others conducting investigations. See Mental Hygiene Law §33.16 for definitions of “qualified researchers” and “qualified persons.”</p> <p>14 NYCRR §603.8 defines grounds for denial of mental hygiene records under FOIL.</p> <p>Mental Hygiene Law §31.11 requires providers of services to notify the DA or other law enforcement within 3 working days if it appears a crime may have been committed against a patient receiving services. Information obtained by the DA or other law enforcement personal pursuant to Mental Hygiene Law §31.11 shall be kept confidential.</p>
2. Private Practitioner	NY CPLR §4504	No	<p>-Physician/Patient Privilege -NY CPLR §4507 provides for a Psychologist/Patient Privilege.</p>

3. Department of Health	10 NYCRR §50-1.6	No	Some records of the Department of Health may be public — but this statute limits availability under FOIL.
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DV SHELTERS/ SERVICES	RELEVANT STATUTES	PUBLIC RECORD	NOTES
1. Domestic Violence residential program	18 NYCRR §452.10	No	All records, books, reports and papers regarding residents are confidential. Access can be gained by authorized individuals. Mentions nothing about access following the death of a resident.
2. Domestic Violence Central Registry	NY Exec. Law §221-a	No	Confidentiality of records governed by Family Court Act, Domestic Relations Law, and Criminal Practice Law. Limited access by certain officials.
3. Victims of Sex Offenses	Civil Rights Law §50-b	No	No report, picture, paper, court file, or other document in the possession of any public officer/employee identifying the victim will be available for public inspection.
4. Adult Protective Services	18 NYCRR §457.16	No	Adult Protective Services' clients' records and reports are confidential except to authorized individuals.
5. Domestic Violence victims with Department of Social Services who disclose Domestic Violence	NY Soc Serv Law §349-a	No	May only be released if required by law or unless authorized by the Department of Social Services applicant or recipient.

CHILD PROTECTIVE SERVICES	RELEVANT STATUTES	PUBLIC RECORD	NOTES
1. Child abuse and neglect investigation	1) NY Soc Serv Law §422-a 2) NY Soc Serv Law §372 3) NY Soc Serv Law §20	Yes, under certain circumstances	Disclosure shall not be contrary to the best interests of the child, the child's siblings or other children in the household AND any one of the following factors are present: (a) the subject of report has been charged in an accusatory instrument with committing a crime related to a report maintained in statewide central registry; or (b) the investigation of abuse or maltreatment of child by local child protective service ... has been publicly disclosed in a report required to be disclosed in the course of their official duties, by law enforcement agency, district attorney, other state or local investigative agencies or by a judge of unified court system; or (c) there has been a prior knowing, voluntary, public disclosure by individual concerning report of child abuse or maltreatment where such individual is named as subject of the report; or (d) the child named in report has died or there was a near fatality.
2. Division For Youth personnel records	9 NYCRR §166-3.12	No (subject to limitation).	May be disclosed to authorized individuals.