

# Fact Sheet on Current Policy

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## Client Information Disclosure to Law Enforcement

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### **Communication:**

- If law enforcement contacts DHS and says they have a warrant for the arrest of an individual and asks for information about that person, please inform the supervisor.
- If the individual receives assistance through a federal program from DHS – TANF, SNAP, or Medicaid then federal confidentiality laws apply and they take precedence, unless it fits the ‘fleeing felon’ exception, already in the confidentiality laws.
- If the individual is not receiving assistance; the only permission to disclose to law enforcement in the statute and rules is when you are turning over information about the abuse investigation where you believe the abuse includes a crime or where law enforcement is conducting their own investigation of the abuse. See ORS 124.065 and 124.070.
- You may not answer a question of where a client lives when law enforcement is looking for an individual because they believe the individual has committed a crime.
- You may not release the address of anyone in an abuse investigation report if law enforcement is going to use it for a reason other than investigating the abuse.
- Law enforcement can and does pursue such information through a subpoena.
- There is one exception for disclosing information about ‘fleeing felons’ in ORS 411.320, but those requests should be handled by the public records staff.

- A warrant is more than the police just looking for someone, therefore the end result is that no DHS employee should ever be giving information out over the phone to law enforcement unless it is to further an abuse investigation or provide protective services.
- Refer any legal document such as a subpoena to the DHS Legal Team at [DHS.LegalUnit@dhsosha.state.or.us](mailto:DHS.LegalUnit@dhsosha.state.or.us) before making any response following local office procedures.

### **Current Rules/Policies:**

- **ORS 124.065** – Method of reporting; content; notice to law enforcement agency and to department.
  - (1) When a report is required under ORS 124.060, an oral report shall be made immediately by telephone or otherwise to the local office of the DHS or to a law enforcement agency within the county where the person making the report is at the time of contact. If known, such reports shall contain the names and addresses of the elderly person and any persons responsible for the care of the elderly person, the nature and the extent of the abuse (including any evidence of previous abuse), the explanation given for the abuse and any other information which the person making the report believes might be helpful in establishing the cause of the abuse and the identity of the perpetrator.
  - (2) When a report of a possible crime is received by the department under ORS 124.060, the department or the designee of the department shall notify the law enforcement agency having jurisdiction within the county where the report was made. If the department or the designee of the department is unable to gain access to the allegedly abused elderly person, the department or the designee of the department may contact the law enforcement agency for assistance and the agency shall provide assistance.
  - (3) If the department or the designee of the department determines that there is reason to believe a crime has been committed, the department or the designee of the department shall immediately notify the law enforcement agency having jurisdiction within the county where the report was made. The law enforcement agency shall confirm to the

department or the designee of the department its receipt of the notification.

**(4)** When a report is received by a law enforcement agency, the agency shall immediately notify the law enforcement agency having jurisdiction if the receiving agency does not. The receiving agency shall also immediately notify the local office of the department in the county where the report was made. [Formerly 410.640; 2009 c. 837 §§10,11]

- **ORS 124.070** – Duty to investigate; notice to law enforcement agency and department; written findings; review by district attorney.

**(1)** Upon receipt of the report required under ORS 124.060, the Department of Human Services or the law enforcement agency shall cause an investigation to be commenced promptly to determine the nature and cause of the abuse. The investigation shall include a visit to the named elderly person and communication with those individuals having knowledge of the facts of the particular case. If the alleged abuse occurs in a residential facility, the department shall conduct an investigation regardless of whether the suspected abuser continues to be employed by the facility.

**(2)** If the department finds reasonable cause to believe that a crime has occurred, the department shall notify in writing the appropriate law enforcement agency. If the law enforcement agency conducting the investigation finds reasonable cause to believe that abuse has occurred, the agency shall notify the department in writing. Upon completion of the evaluation of each case, the department shall prepare written findings that include recommended action and a determination of whether protective services are needed.

**(3)** After receiving notification from the department that there is reasonable cause to believe that a crime has occurred, a law enforcement agency shall notify the department:

**(a)** That there will be no criminal investigation, including an explanation of why there will be no criminal investigation;

**(b)** That the investigative findings have been given to the district attorney for review; or

**(c)** That a criminal investigation will take place.

**(4)** If a law enforcement agency gives the findings of the department to the district attorney for review, the district attorney shall notify the department that the district attorney has received the findings and shall

inform the department whether the findings have been received for review or for filing charges. A district attorney shall make the determination of whether to file charges within six months of receiving the findings of the department.

**(5)** If a district attorney files charges stemming from the findings of the department and the district attorney makes a determination not to proceed to trial, the district attorney shall notify the department of the determination and shall include information explaining the basis for the determination. [Formerly 410.650; 2009 c.837 §§12, 13].

- **[ORS 411.320](#)** – Disclosure and use of records limited to purposes connected to administration of public assistance programs; contents as privileged communication; exceptions.

**(1)** For the protection of applicants for and recipients of public assistance, except as otherwise provided in this section, the Department of Human Services may not disclose or use the contents of any public assistance records, files, papers or communications for purposes other than those directly connected with the administration of the public assistance programs or necessary to assist public assistance applicants and recipients in accessing and receiving other governmental or private nonprofit services, and these records, files, papers and communications are considered confidential subject to the rules of the department. In any judicial or administrative proceeding, except proceedings directly connected with the administration of public assistance or child support enforcement laws, their contents are considered privileged communications.

**(2)** Nothing in this section prohibits the disclosure or use of contents of records, files, papers or communications for purposes directly connected with the establishment and enforcement of support obligations pursuant to the Title IV-D program.

**(3)** Nothing in this section prohibits the disclosure of the address, Social Security number and photograph of any applicant or recipient to a law enforcement officer at the request of the officer. To receive information pursuant to this section, the officer must furnish the agency the name of the applicant or recipient and advise that the applicant or recipient:

- (a)** Is fleeing to avoid prosecution, custody or confinement after conviction for a felony;
- (b)** Is violating a condition of probation or parole; or

(c) Has information that is necessary for the officer to conduct the official duties of the officer and the location or apprehension of the applicant or recipient is within such official duties.

(4) Nothing in this section prohibits disclosure of information between the department and the Oregon Health Authority for the purpose of administering public assistance programs. [1953 c.500 §5; 1971 c.779 §17; 1995 c.609 §8; 1997 c.581 §7; 2001 c.900 §88a; 2011 c.720 §100].

- [ORS 659A.212](#) – Policy on cooperation with law enforcement officials; duty to report person subject to warrant for arrest.
  - (1) In order to protect the safety of the citizens of this state, it is the policy of this state that all public employers and their employees cooperate with law enforcement officials in the apprehension of person subject to a felony or misdemeanor warrant for arrest.
  - (2) Notwithstanding any other law, when an employee reasonably believes that a person receiving services, benefits or assistance from the state or any agency or political subdivision in the state is subject to a felony or misdemeanor warrant for arrest issued by this state, any other state, the federal government, or any territory, commonwealth or governmental instrumentality of the United States, the employee shall promptly and without delay report to the employee's immediate supervisor or a person designated by the agency by rule to receive such report.
  - (3) The supervisor or person designated by the agency shall notify the Oregon State Police promptly and without delay of the information supplied by the employee.
  - (4) The notification required by subsections (2) and (3) of this section shall include disclosure of the name and address of the person, available information concerning the felony or misdemeanor warrant for arrest and other available identifying information.
  - (5) Information disclosed under this section shall only be used by law enforcement officials to verify the existence of a felony or misdemeanor warrant for arrest of the person and to apprehend the person if a felony or misdemeanor warrant for arrest exists. [Formerly 659.525]